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ABSTRACT

This report examines 1982 Federal budget proposals to reduce allocations for civil rights enforcement efforts, to reduce or eliminate several equal rights programs, and to limit categorical grants in favor of block grants that would authorize funding for several activities under one law. The analysis derives its basis from government principles of emancipation and equality reflected in the "Civil War" amendments to the Constitution. The report traces the history of the amendments and of subsequent civil rights legislation, examines the results of civil rights movements and government efforts to eliminate the effects of past discrimination, and analyzes the consequences of the budget proposals for Federal civil rights enforcement efforts. The relationship of social and economic equal opportunity programs to the Civil War Amendments is also examined and effects of proposed revisions on program budgets are evaluated. The efficacy of the block grants approach from a civil rights perspective is also considered. It is concluded that proposed budget restrictions will hamper Federal efforts against discrimination in education, employment, housing, and services provision and, further, that the conversion of categorical programs to block grants without developing essential enforcement mechanisms will jeopardize guarantees that funds will be targeted exactly as Congress intended. (Author/MJL)

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ED216083

Civil Rights: A National, Not a Special Interest

A STATEMENT OF
THE UNITED STATES COMMISSION
ON CIVIL RIGHTS
June 25, 1981

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

June 25, 1981

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The United States Commission on Civil Rights transmits this report to you pursuant to Public Law 85-315, as amended.

The 13th, 14th and 15th amendments to the Constitution passed at the close of and in the years immediately following the Civil War are the embodiment of the promises of emancipation and equality which are fundamental to our system of government. The Commission believes that these "Civil War amendments" form the constitutional backdrop against which proposed revisions of the Federal budget must be viewed.

CIVIL RIGHTS: A NATIONAL, NOT A SPECIAL INTEREST examines recent budget proposals affecting federal civil rights enforcement efforts and programs which were enacted to overcome the present effects of the legacies of slavery, segregation and discrimination.

Respectfully,

Arthur S. Flemming, CHAIRMAN
Mary F. Berry, VICE CHAIRMAN
Stephen Horn
Blandina Cardenas Ramirez
Jill S. Ruckelshaus
Murray Saltzman

Louis Nuñez, STAFF DIRECTOR

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Preface

> To a few of us here today this is a solemn and most momentous occasion. And, yet, in the history of our Nation it is a commonplace occurrence. The orderly transition of authority as called for in the Constitution routinely takes place, as it has for almost two centuries, and few of us stop to think how unique we really are. In the eyes of many in the world, this every-4-year ceremony we accept as normal is nothing less than a miracle.

With these thoughtful words, President Ronald Reagan began his Inaugural Address. In many ways, our Constitution is unique within the family of nations. Unique, in that it is the oldest written constitution; unique, in that it is a living document, given new meaning and vitality through amendments and Supreme Court decisions; and unique, in that it extends its protections and obligations to our most humble as well as to our most prominent citizens.

The 13th, 14th and 15th amendments to the Constitution, passed at the close of and in the years immediately following the Civil War, are the keystone in the arch of freedom we call civil rights. They were the embodiment of the promise of emancipation. These constitutional guarantees not only ensured the abolition of slavery and the acquisition of legal rights, they also led to the enactment of legislation and the establishment of programs to overcome the vestiges of slavery and effectuate the promises made by the Civil War amendments. They not only created new civil rights for all people, they empowered the Federal Government with the authority and responsibility to enforce them. These promises were not realized, for the Federal Government relinquished its role as guarantor and allowed slavery to be replaced by legally mandated segregation. The tragic effect of these occurrences was to ensure for decades to come inferior education, inadequate housing, and economic deprivation for people of color.

The historical record of preserving, protecting and defending these three amendments--and Federal court decisions and congressional legislation based upon them--remains at best, uneven. But one thing is clear: civil rights leadership has been provided by Presidents representing both of our great political parties. Congressional leadership for civil rights legislation has been bipartisan.

Republican administrations--from that of Abraham Lincoln, who signed the Emancipation Proclamation to that of Theodore Roosevelt, who spoke for racial equality; to that of Dwight Eisenhower, who utilized the powers of his office to enforce court orders mandating the desegregation of public schools; to that of Richard Nixon, who won congressional support for technical and financial assistance to minority-owned businesses--have stood firm in their support for civil rights progress.

Democratic administrations--from that of Franklin D. Roosevelt, who created the war-time Fair Employment Practices Committee to that of Harry S Truman, who desegregated the armed forces; to that of John F. Kennedy, who created the President's Committee on Equal Opportunity in Housing; to that of Lyndon B. Johnson, who led the fight for the 1964 Civil Rights Act--have stood firm in their support for civil rights progress.

It would be tragic, indeed, if this administration's efforts to balance the budget, cut taxes and expand the defenses of the Nation were to diminish or undercut the Federal Government's responsibility, or its capacity to fulfill that responsibility, to preserve, protect and defend the constitutional rights of all Americans.

Yet, as this statement documents, there is grave danger of that happening. The Commission on Civil Rights has examined sections of the proposed revisions to the Fiscal Year 1982 Federal budget which would have a significant impact on civil rights. As they now stand, these specific proposals would reduce certain Federal civil rights enforcement efforts, weaken or eliminate several social and economic programs essentially related to providing equal opportunities in our society, and expand the block grant approach without adequate Federal guidelines.

Our inquiry has proceeded in the belief that these proposed budget cuts should be examined and analyzed both individually and collectively to determine their consistency with core principles in our national value system expressed in the 13th, 14th and 15th amendments to the Constitution of the United States. Their promise of freedom, equality and civil rights should be considered extensively and sensitively as the budget process continues and as congressional consideration moves from the general to the specific. The opportunity for re-evaluation from this perspective lies ahead in the next few months for the administration and the Congress.

The Commission applauds the President's commitment to civil rights as enunciated in his Inaugural Address:

> How can we love our country and not love our countrymen; and loving them, reach out a hand when they fall, heal them when they're sick, and provide opportunity to make them self-sufficient so they will be equal in fact and not just in theory?

The U.S. Commission on Civil Rights developed this statement in the belief that it may alert the administration and the Congress to the dangers inherent in treating civil rights--those efforts to make all Americans equal in fact and not just in theory--as just a special interest competing for Federal funds. They are not, and cannot be treated that way. These constitutional protections are the foundation upon which the American body politic rests.

Introduction

The administration's Fiscal Year 1982 budget proposals seek to reduce allocations for specific civil rights enforcement efforts, to reduce or eliminate several programs and to expand the block grant approach.

This analysis derives its basis from the "Civil War" amendments to the Constitution. This statement focuses on the administration's budget proposals and their impact on efforts to overcome racial discrimination. Efforts to overcome other invidious forms of discrimination, particularly sex discrimination, are also of serious concern. */

This statement is divided into six sections. Chapter 1 traces the evolution of the Civil War amendments from their inception to the early 1950s prior to the Supreme Court decision in Brown v. Board of Education. The 19th and early 20th century history of the Civil War amendments and subsequent legislation reveals two very distinct civil rights periods. The first, ending with the close of the Reconstruction era in the 1870s, was a period of brief progress towards the goals of full emancipation from the badges and incidents of slavery and the achievement of equal opportunity. The second, commencing at the end of Reconstruction, reveals the long and tragic history of broken constitutional promises.

Chapter 2 traces the victory of the civil rights movement over legal segregation. It also highlights the fact that elimination of de jure segregation did not by itself produce social and economic equality, and therefore the Federal Government responded with a concerted effort to eliminate discrimination and the present effects of past discrimination that have locked Americans of color into a vicious cycle of poverty.

Chapter 3 analyzes the consequences of the budget proposals for the Federal civil rights enforcement efforts.

Chapter 4 traces the origins of some specific social and economic programs, documents their relationship to the guarantees of the Civil War amendments, and evaluates the proposed revisions in their budgets.

Chapter 5 considers the efficacy of the block grant approach from a civil rights perspective.

These chapters are followed by a brief conclusion and a summary of the entire statement.

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*/ See Appendix A for a discussion of the budget proposals and their impact on women.

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Chapter 1
From Slavery To Brown

Roots of Slavery and the Civil War

The history of blacks in America dates back to the early colonial era. Their enslavement was the outgrowth of a mixture of religious philosophy, racial attitudes, and the economic need for a stable agrarian labor force. 1/ The perpetuation of slavery was an important objective of the framers of the Declaration of Independence, who omitted an abolitionist plank from that document, 2/ and of the founding fathers in drafting the Constitution. 3/ Legal recognition of the institution of slavery permeated the social, political, and economic fabric of the new country. Historian John Hope Franklin has remarked on the paradox of the post-colonial period:

> [Americans] proudly accepted the challenge and responsibility of their new political freedom by establishing the machinery and safeguards that insured the continued enslavement of blacks. 4/

1/ Kenneth M. Stampp, The Peculiar Institution, Slavery in the Ante-Bellum South (New York: Vintage, 1956), pp. 3-33. See also, Rayford W. Logan, The Betrayal of the Negro: From Rutherford B. Hayes to Woodrow Wilson (New York: Collier Books, 1965), p. 125 (hereafter cited as Logan, The Betrayal of the Negro); and John Hope Franklin, From Slavery to Freedom (New York: Alfred Knopf, 1980), pp. 132-133, 136-191.

2/ W.E.B. DuBois, The Suppression of the African Slave Trade to the United States of America: 1638-1870 (Baton Rouge: Louisiana State University Press, 1965), pp. 48-49.

3/ For the purposes of apportionment of congressional representation and taxation, slaves were treated as three-fifths of a person. U.S. Const., art. I, §2, cl. 3 (repealed by the 14th amendment). "The Migration or Importation" of slaves was permitted until the year 1808. Id. at art. I, §9, cl. 1. The Constitution also contained a fugitive slave clause which required that a slave who escaped to another State must be "delivered up on Claim of" his master. Id. at art. IV, §2, cl. 3.

4/ Franklin, From Slavery to Freedom, p. 96.

Legislation and judicial decisions repeatedly validated the legality of slavery. The Congress, in adopting the Missouri Compromise of 1820, permitted slavery in the Louisiana Purchase territory south of Missouri. 5/ The Supreme Court of the United States judicially sanctioned the practices of the institution of slavery in several cases, 6/ ultimately holding in the Dred Scott case that blacks were property and not persons. 7/ In reaching this decision, the Court recognized that historically blacks were regarded as "beings of an inferior order, and altogether unfit to associate with the white race...and...had no rights which the white man was bound to respect." 8/ Thus, the theory of chattel slavery and the philosophy of racial "inferiority" of blacks were given constitutional recognition by the highest court in the land.

The issue of slavery exacerbated the growing national division between North and South, ultimately leading to the Civil War. That conflict resulted in the signing by President Abraham Lincoln of the Emancipation Proclamation on January 1, 1863, which freed some but not all slaves and did not by itself end the institution of slavery. 9/ It was the adoption and ratification of the 13th amendment in 1865 that legally abolished slavery, thus eviscerating the "legal" and "moral" bases for the Dred Scott decision.

5/ Act of Mar. 6, 1820, ch. 22, §8, 3 Stat. 545, 548.

6/ Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539 (1842); Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).

7/ Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).

8/ *Id.* at 407. The Court further stated that blacks were not included within the meaning of the "people of the United States" in the preamble to the Constitution because they were a "subordinate and inferior class of beings who had been subjugated by the dominant race." *Id.* at 405.

9/ T. Harry Williams, Richard N. Current, and Frank Friedel, *A History of the United States to 1877* (3d ed. 1969), p. 640. The text of the Emancipation Proclamation and a discussion of its relationship to the 13th amendment can be found in Bernard Schwartz, *Statutory History of the United States: Civil Rights* (1970), vol. I, pp. 22-23 (hereafter cited as Schwartz, *Statutory History*).

The Civil War Amendments

The abolition of slavery was intended by its drafters to signal a new era in the scarred history of race relations in this country. The 13th amendment proclaimed the end of the institution of slavery and included a section that provided, "Congress shall have power to enforce this article by appropriate legislation." 10/ Thus, the Federal Government was clearly vested with the primary role in the eradication of slavery and its "badges and incidents."

The 13th amendment, as conceived by its proponents, was meant to do more than abolish slavery. It was intended to be a constitutional promise of true freedom for millions of blacks who suffered under slavery. The congressional intent was to provide a "practical freedom" 11/ that would place blacks on an equal footing with white citizens and remove the badge of moral inferiority that had been placed upon them and oppressed them from the earliest period of American history. This "practical freedom" included both the attainment of equal legal rights and the acquisition of an economic base that would provide freedom from the conditions that had bound them to white slaveowners.

Congress established the Freedmen's Bureau in 1865 to help blacks in the transition from slavery to independence and freedom. 12/ The Bureau provided food, clothing, temporary shelter, and fuel for freedmen and their families. It was also authorized to help blacks rent and acquire former Confederate lands, 13/ a program intended to provide a base for blacks to achieve economic equality.

The establishment of the Freedmen's Bureau was the earliest recognition of the Federal Government's responsibility for the eradication of the conditions and effects of slavery through social programs. But a number of factors frustrated the Bureau's effort:

10/ U.S. Const. amend. XIII, §2.

11/ CONG. GLOBE, 39th Cong., 1st Sess. 474 (1866) (remarks of Sen. Trumball, R-Ill.).

12/ Act of Mar. 3, 1865, ch. 90, 13 Stat. 507.

13/ *Id.* at §4.

> Congress' fiscal conservatism, reluctance to enlarge the federal bureaucracy, and desire to preserve the state-centered federal system meant that Bureau officials possessed inadequate means to deal with the vast problems that confronted them. The tremendous control that President Andrew Johnson exercised over the Bureau and his determination to minimize Bureau activity frequently tied Bureau officials' hands. Moreover, Southern whites' determination to maintain control over the freedmen presented the Bureau with a task that, under the most favorable circumstances, would have been extremely difficult to perform. 14/

Thus, the attempt to secure freedom met opposition from all sides. Blacks became targets of violence that was aimed at keeping them in a state of subjugation and domination by whites. 15/ This violence went largely unpunished by State judicial systems; in the rare instances when punishment was meted out to whites, the judicial officers were themselves subject to violence or removal from office.

State legislatures also adopted restrictive laws to govern the conduct of blacks. In superficially neutral language, the infamous "Black Codes" exacted harsher legal treatment for blacks than for whites. 16/ Blacks could be prosecuted with charges such as vagrancy for refusing to submit to unfair labor contracting practices by white landowners. 17/ Apprenticeship provisions were used by whites to separate black children from their parents. 18/ The children were placed in virtual, if

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14/ Donald G. Neiman, To Set The Law In Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868 (1979), pp. ix-x (hereafter cited as Neiman, To Set the Law in Motion). See also, ibid., pp. xiii-xvii.

15/ Ibid., pp. 24-27. See also John Hope Franklin, Reconstruction: After the Civil War (Chicago: University of Chicago Press, 1962), pp. 51-52.

16/ Neiman, To Set the Law in Motion, pp. 72-98.

17/ Ibid., p. 75.

18/ Ibid., p. 76.

not actual, slavery to white landowners. The Black Codes represented an intentional effort to return to the status quo of antebellum slave society. 19/

These actions by white citizens and State and local governments, based on the philosophy of "racial inferiority," undermined the transition from legal slavery to freedom and equality for blacks. Congress soon recognized that more than the mere adoption of the 13th amendment was necessary to secure the rights and privileges of freedom. 20/ In response, Congress adopted the 14th and 15th amendments. The 14th amendment, ratified in 1868, was designed to prevent the abridgment of the privileges and immunities of national citizenship, the deprivation of "life, liberty, and property, without due process of law" of any person, and the denial of "equal protection of the laws." 21/ The 15th amendment, ratified in 1869, guaranteed blacks the right to vote.

Federal Civil Rights Legislation

The Federal Government realized that the language of the Civil War amendments would not, by itself, ensure their enforcement. Because State and local government authorities were outrightly hostile to the amendments, Congress understood clearly that without an enforcement mechanism, the amendments were merely hortatory, granting only "paper" rights. As Senator Lyman Trumball (R--Ill.), Chairman of the Senate Judiciary Committee, forcefully stated during congressional debates on the Civil Rights Act of 1866, 22/ the 13th amendment meant more than a paper guarantee:

19/ Franklin, From Slavery to Freedom, p. 232.

20/ Logan, The Betrayal of the Negro, p. 20.

21/ Although it was argued by proponents of the Civil Rights Act of 1866 on the floor of Congress that clause 2 of the 13th amendment was a sufficient constitutional basis for that legislation (see CONG. GLOBE, 39th Cong., 1st Sess. 43 (1865) (remarks of Sen. Trumball)), Congress passed the 14th amendment to resolve that issue of legislative power. For a history of the drafting and adoption of the 14th amendment and the congressional debates on that amendment, see Schwartz, Statutory History, pp. 181-292.

22/ Act of Apr. 9, 1866, ch. 31, 14 Stat. 27.

> There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be affected by them have some means of availing themselves of their benefits....And of what avail will it now be that the Constitution of the United States has declared that slavery shall not exist, if in the late slaveholding States laws are to be enacted and enforced depriving persons of African descent of privileges which are essential to freemen?
>
> It is the intention of this bill to secure those rights. 23/

Congress recognized that it had primary responsibility not only under section two of the 13th amendment, but later under section five of the 14th amendment and section two of the 15th amendment, for implementing the constitutional promise of equality embodied in those amendments. Consequently, it enacted several civil rights bills, 24/ including the Civil Rights Act of 1866, the Civil Rights Act of 1870, the Ku Klux Klan Act of 1871, and the Civil Rights Act of 1875.

In 1866, one year after ratification of the 13th amendment, Congress passed the first national civil rights act. The Civil Rights Act of 1866 declared all persons born in the United States to be citizens and provided that citizens regardless of race, color, or previous condition of servitude have the same right to contract, to file suit, to testify in court, to acquire, hold, and dispose of real and personal property, to enjoy full and equal benefit of all laws and proceedings

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23/ CONG. GLOBE, 39th Cong., 1st Sess. 474 (1866).

24/ The establishment of a Federal enforcement mechanism was augmented by the second Freedmen's Bureau Act, which extended the life of the Freedmen's Bureau and gave its officials greater authority to shield freedmen from violations of their legal rights. It provided that blacks in the Confederate States were entitled to the same civil rights as whites. To enforce those provisions, Bureau officials were empowered to punish by imprisonment of up to 1 year and by fine of up to $1,000 any State official who continued to enforce discriminatory State statutes. Act of July 16, 1866, ch. 200, 14 Stat. 173.

enjoyed by white citizens, and to be free from discrimination in the punishment for crimes notwithstanding any State or local "law, statute, ordinance, regulation, or custom, to the contrary." 25/

Congress also enacted legislation to carry out the mandates of the 14th and 15th amendments. The Civil Rights Acts of 1870 26/ and 1871 27/ and the Ku Klux Act of 1871 28/ provided civil and criminal penalties for the abridgment of the right to vote. In addition, these acts prohibited the denial or infringement, or the conspiracy to deny or infringe, upon other rights and privileges secured by the Constitution or laws of the United States.

The last civil rights bill enacted in the post-Civil War era--indeed the last Federal civil rights statute enacted by Congress until 1957--was the Civil Rights Act of 1875. 29/ It prohibited discrimination in the full and equal enjoyment of public accommodations and provided civil and criminal penalties for violations. Another section of the act penalized discrimination in jury selection on the basis of "race, color, or previous condition of servitude." 30/

The Failure of Reconstruction

The Federal role in enforcing the newly-acquired rights of blacks, although a major departure from the existing State-centered Federal system, was essential for the removal of local prejudices and customs that prevented the realization of the promise of equality embodied in the post-Civil War amendments. 31/ The proliferation of Federal civil rights statutes, however, did not ensure the transition from slavery to freedom. Whites and State and local governments continued

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25/ Act of Apr. 9, 1866, ch. 31, 14 Stat. 27.

26/ Act of May 31, 1870, ch. 114, 16 Stat. 140.

27/ Act of Apr. 20, 1871, ch. 22, 17 Stat. 13.

28/ Act of Feb. 28, 1871, ch. 99, 16 Stat. 433.

29/ Act of Mar. 1, 1875, ch. 114, 18 Stat. 335.

30/ *Id.*, §4.

31/ Schwartz, *Statutory History*, pp. 181-83.

to oppose the guarantees of the Civil War amendments. The return to governmental power of Southern whites, aided by the rise of organizations such as the Ku Klux Klan and the Knights of the White Camelia, continued to subordinate blacks in American society. 32/ Every available means was employed to drive blacks from participating in public life.

Although the use of force and intimidation by the KKK and other secret societies were contributing factors, white control of the economic system played a large part in preventing blacks from attaining true freedom and independence. The constitutional promise of equality was frustrated by the power of economic pressures:

> The war had freed the Negro, but he was still a laborer--a hired worker or tenant--dependent upon the whites for his livelihood. The whites readily discovered that this dependence placed the Negro in their power. Planters refused to rent land to Republican Negroes, storekeepers refused to extend them credit, employers refused to give them work. Economic pressure was a force that the Negro could not fight. If the [pro-Reconstruction Members of the 39th Congress], in bringing the Negro to political power, had accomplished a revolution, it was a superficial one. They failed to provide the Negro with economic power, as they might have done by giving him possession of confiscated land...." 33/

Despite the need for continued national intervention in the face of coordinated resistance to equality for blacks, the Federal Government soon abdicated that role. Under the Compromise of 1877, Federal troops were fully withdrawn from the Southern States, restoring local control of government. 34/

The return to home rule in the South meant not only return to white supremacy but also to a State-centered Federal system. "The withdrawal of the troops was a symbol that the national

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32/ Logan, The Betrayal of the Negro. p. 21.

33/ Williams, Current, and Friedel, History of the U.S. to 1877, p. 722.

34/ Ibid., pp. 731-54.

government was giving up its attempt...to determine the place of the Negro in Southern society." 35/

This abandonment by the Federal Government was reinforced by the Supreme Court's decision in the Civil Rights Cases, 36/ which declared the public accommodations section of the Civil Rights Act of 1875 to be unconstitutional. The Court held that the exclusion of blacks from public accommodations by private individuals was a form of discrimination that the Congress was without power to remedy. 37/ The opinion:

> served notice that the Federal Government could not lawfully protect the Negro against the discrimination which private individuals might choose to exercise against him. This was another way of saying that the system of "white supremacy" was mainly beyond Federal control, since the Southern social order rested largely upon private human relationships and not upon state-made sanctions. 38/

Thus, "the Court strangled Congress' efforts to use its power to promote racial equality." 39/

Subsequently, the Southern states began replacing the institution of slavery with a system of customs and laws which "...proceeded on the ground that colored citizens [were] so inferior and degraded that they [could not] be allowed to..." have any contact with "[t]he white race [who had] deem[ed] itself to be the dominant race in this country." 40/ Laws were enacted to segregate the races in housing, public transportation, educational institutions, and other public

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35/ Ibid., p. 723.

36/ 109 U.S. 3 (1883).

37/ Id.

38/ Alfred Kelly and Winfred A. Harbison, The American Constitution: Its Origins and Development (3d ed. 1963), p. 491.

39/ Regents of the University of California v. Bakke, 438 U.S. 265, 391 (opinion of Marshall, J.).

40/ Plessy v. Ferguson, 163 U.S. 537, at 559-60 (1896) (Harlan, J., dissenting).

facilities. 41/ Societal custom and practice subjected blacks and other minorities to overt discrimination and exclusion from many occupations as well as denial of equal pay for equal work. 42/

The effect of this segregation was to ensure inferior education, inadequate housing, and economic deprivation. Without access to quality education, decent housing, employment opportunities, and socio-economic mobility, blacks and other minorities were relegated to second-class citizenship. Thus, they became trapped in a system of social and economic bondage that transformed the constitutional promise of equality for blacks into a condition of poverty. 43/ The later judicial validation of this system under the "separate but equal" doctrine would firmly establish a vicious cycle of poverty.

Segregation: Separate and Unequal

A most devastating blow to the Civil War amendments came in 1896 with the Supreme Court decision in *Plessy* v. *Ferguson*. 44/ That decision upheld the constitutionality of a Louisiana statute requiring railroad companies to provide "equal but separate" passenger train accommodations for blacks and whites. It held that the statute violated neither the 13th nor the 14th amendments. 45/

In rejecting the legal claims of the plaintiff, Plessy, the Court concluded that the statute did not represent a "badge of slavery":

41/ Charles S. Mangum Jr., *The Legal Status of The Negro* (Chapel Hill: University of N.C. Press 1940), pp. 181-222.

42/ Louis Ruchames, *Race, Jobs and Politics: The Story of The FEPC* (New York: Columbia University Press, 1953), pp. 3-21. *See also* Exec. Order No. 8802, 3 C.F.R. 957 (1938-1943 Compilation).

43/ Arthur B. Ross, "The Negro in the American Economy," in *Employment, Race, and Poverty*, ed. Arthur M. Ross and Herbert Hill (New York: Harcourt, Brace & World Inc, 1967), pp. 3-48. *See also* Robert H. Olson, "Employment Discrimination Litigation: New Priorities in the Struggle for Black Equality," 6 Harv. Civ. Rights & Civ. Lib. L. Rev. 20, 22-33 (1970).

44/ 163 U.S. 537 (1896).

45/ *Id*. at 543, 551.

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it. 46/

The legacy of the Civil Rights Cases and Plessy v. Ferguson was the creation of two societies--one black and one white. The cases spurred States and localities to enact a plethora of "Jim Crow" laws to complete the process of racial segregation, which became the dominant statement of American legal, social, economic, and political order. Blacks were segregated from whites "in churches, schools, hospitals, prisons, insane asylums, parks, theaters, hotels, restaurants, barbershops, courtrooms, at drinking fountains, in rest rooms, on town and courthouse square benches, in cemeteries, newspaper columns, and marriage, in fact everywhere." 47/ In human terms, the validation of the "separate but equal" doctrine by the Supreme Court in Plessy excluded blacks from the social and economic mainstream.

The Civil War amendments were thus distorted. Their grant of equality would take blacks only up to, but not through, the door that read "whites only." The doctrine of "separate but equal" would remain an integral part of American life until it was successfully challenged in the mid-20th century and ultimately overturned by Brown v. Board of Education. 48/

Early 20th Century

The beginning of the 20th century saw the outbreak of racial violence. Blacks were not only targets of riots in many parts of the country but they were also victims of "flogging, branding with acid, tarring and feathering, hanging, and burning" at the hands of the reemergent Ku Klux Klan. 49/

46/ Id. at 551.

47/ Rembert W. Patrick, The Reconstruction of the Nation (New York: Oxford University Press, 1967), p. 285.

48/ 347 U.S. 483 (1954).

49/ U.S., Report of the National Advisory Commission on Civil Disorders (1968), pp. 101-02. The National Advisory Commission on Civil Disorders is more commonly known as the Kerner Commission.

It was clear that Federal assistance would continue to be necessary to eliminate the conditions and effects of slavery--discrimination and segregation. The Federal Government, however, neither adequately enforced civil rights laws nor developed the social and economic programs essential for fulfilling this promise. In the half century following Plessy, the Federal Government was largely inactive or antagonistic to efforts to fulfill earlier constitutional promises of equality.

In fact, the Federal Government, notwithstanding unsuccessful congressional attempts to enact statutes sanctioning segregation of the races and banning interracial marriages, 50/ contributed to "Jim Crow" segregation efforts under the administration of President Woodrow Wilson. 51/ With his express approval, black civil servants in almost every Federal department were racially segregated in their employment and separate dining and toilet facilities were mandated. 52/ Federal executives enjoyed the power to dismiss and demote black Federal officials and postmasters, particularly in the Southern States. 53/

It was not until the administrations of Franklin D. Roosevelt and Harry S Truman that blacks and other minorities again could hope that the Federal Government would renew its commitment to equality. Establishment of the Fair Employment Practices Committee 54/ under the Roosevelt administration and

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50/ Logan, The Betrayal of the Negro, p. 363-65.

51/ Ibid., pp. 359-70; Henry Blumenthal, "Woodrow Wilson and the Race Question," 48 J. of Negro Hist. 1-21 (hereafter cited as Blumenthal, Wilson and the Race Question).

52/ Logan, The Betrayal of the Negro, pp. 361-62; Blumenthal, Wilson and the Race Question, pp. 5-6; Thomas F. Gossett, Race: The History of an Idea in America (Dallas: Southern Methodist University Press, 1963), p. 279; Samuel Eliot Morison, The Oxford History of the American People (New York: Oxford University Press, 1965), p. 847.

53/ Gossett, Race: History of an Idea, p. 279; Blumenthal, Wilson and the Race Question, p. 6; Harvard Sitkoff, A New Deal for Blacks: The Emergence of Civil Rights as a National Issue (New York: Oxford University Press, 1978), p. 20.

54/ Exec. Order No. 8802, 3 C.F.R. 957 (1938-1943 Compilation).

the Committee on Civil Rights 55/ under the Truman administration gave Federal recognition to the civil rights problems confronting persons of color, but these governmental bodies provided only limited, temporary victories.

The Second World War highlighted this paradox for the United States: while the Nation was fighting for democracy in Europe, it was denying it to some of its own citizens at home. The Roosevelt administration, realizing the need to use all available American manpower in the war effort, confronted the racial discrimination issue. Initial attempts at persuasion were not particularly successful. A. Philip Randolph and other black leaders urged the Federal Government to take direct and effective action to end discrimination in defense industry employment and in the armed forces. 56/ In order to deter a march on Washington by an estimated 100,000 blacks, 57/ President Roosevelt responded with an executive order creating the Fair Employment Practices Committee (FEPC), 58/ which achieved some progress in breaking down discriminatory barriers in employment against blacks. Although the establishment of a Fair Employment Practices Committee eventually received the specific endorsement of both major political parties, 59/ the FEPC ended 5 years later in 1946, a victim of conservative Congressmen. 60/

55/ Exec. Order No. 9808, 3 C.F.R. 590 (1943-1948 Compilation).

56/ Ruchames, Race, Jobs & Politics: The Story of The FEPC, pp. 11-21.

57/ Ibid., pp. 17-21.

58/ On June 25, 1941, President Roosevelt issued Executive Order 8802 which "reaffirm[ed] the policy of...full and equitable participation of all workers in defense industries, without discrimination because of race, creed, color, or national origin." The order also required nondiscrimination clauses in all defense contracts. 3 C.F.R. 957 (1938-1943 Compilation).

59/ The establishment of a Fair Employment Practices Commission first received the support of the 1944 Republican Presidential Convention. Ruchames, The Story of The FEPC, p. 200. It later received the endorsement of the 1948 Democratic Presidential convention. Arthur S. Link, American Epoch: A History of the United States Since the 1890's (3d ed. 1963), p. 677.

60/ Ruchames, The Story of The FEPC, pp. 121-36.

Soon after the demise of the FEPC, President Truman appointed the President's Committee on Civil Rights to investigate and "make recommendations with respect to the adoption or establishment, by legislation or otherwise, of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States." 61/

The Committee found that the civil rights issue was not a regional problem but a national one affecting the lives of black Americans, Mexican Americans, Asian Americans, American Indians, and Puerto Ricans. Its 1947 report, To Secure These Rights, "exposed the operation and consequences of the caste system and called for a systematic Federal-State program to root out injustices based on race." 62/ President Truman, although he made annual appeals to the Congress, was unable to persuade that body 63/ to adopt the recommendations of his Committee on Civil Rights. 64/

61/ Exec. Order No. 9808, 3 C.F.R. 590 (1943-1948 Compilation).

62/ Link, American Epoch, p. 682.

63/ Nonetheless, the President was able to:

1. strengthen the Civil Rights Section of the Department of Justice;
2. begin the practice of the Justice Department assisting private parties in civil rights cases;
3. appoint the first Negro Governor of the Virgin Islands and the first Negro Federal judge;
4. and most importantly, begin abolition of segregation in governmental departments and the armed services in 1948. Ibid.

64/ Among its recommendations were: the strengthening of the Civil Rights Section of the Department of Justice; the creation of a special civil rights investigation unit within the Federal Bureau of Investigation; the enactment of legislation by Congress and State legislatures to eliminate discrimination and protect the civil rights of persons of color; the creation of a permanent FEPC; and the establishment of a permanent Commission on Civil Rights. U.S., President's Committee on Civil Rights, To Secure These Rights (1947), pp. 151-72.

But congressional resistance during the 1940s and early 1950s to civil rights legislation, as recommended by the Roosevelt FEPC 65/ and the Truman Civil Rights Committee, and the Federal Government's continued unwillingness to honor its responsibility for implementing the Civil War amendments ultimately left to another era the fulfillment of the constitutional promise.

65/ The termination of the Roosevelt FEPC was accompanied by its Final Report, which made the following recommendations to the President:

> 1. The passage of legislation by Congress to guarantee equal job opportunity to all workers without discrimination because of race, color, religious belief, or national origin.
> 2. Wide promulgation of the Federal Government's fair employment practices and enforcement to bring about non-discrimination/fair employment.
> 3. Statistical collection and reporting by race and sex within industries and occupations be conducted to document "employment handicaps of minority group workers."

Ruchames, The Story of The FEPC, pp. 135-36.

Chapter 2
From Legal Equality to Equal Opportunity

The promise of equal opportunity remained unfulfilled well into the 1950s, more than 90 years after the constitutional abolition of slavery. The legal guarantees of equal protection, due process, and access to the polling booth were all undermined by the continuing power of the doctrine of white supremacy in American life. The implicit promise of freedom--that equality of opportunity would become a reality--also remained unfulfilled. Despite theoretical legal equality, the realities of equal education, equal employment, equal housing, and the overarching opportunity to achieve in life to the limits of one's abilities, all remained frustratingly out of reach.

Before the promise of equality of opportunity could be fulfilled, it was first necessary to strike down the legal segregation epitomized in the "Jim Crow" laws that had been put in place in the post-Reconstruction period. Segregated school systems became one target. In 1952 the Supreme Court of the United States agreed to review five cases that attacked school segregation as a denial of equal protection of laws. 1/

On May 17, 1954, the Supreme Court in a unanimous opinion struck down public school segregation 2/ and the "separate but equal" doctrine upon which it rested. 3/ The Court found explicitly that segregation imposed a badge of inferiority upon black children which had incalculable negative lifetime consequences for them. The Court wrote:

> To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of

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1/ The Supreme Court consolidated cases from Kansas, South Carolina, Virginia, Delaware, and the District of Columbia. Brown v. Board of Education, 347 U.S. 483 (1954). Four cases alleged that de jure segregation violated the equal protection clause of the 14th amendment. The case from the District of Columbia, Bolling v. Sharpe, 347 U.S. 497 (1954), alleged that segregation violated the fifth amendment requirement of due process of law.

2/ Brown v. Board of Education, 347 U.S. 483 (1954).

3/ Plessy v. Ferguson, 163 U.S. 537 (1896).

> inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. 4/

The Court noted approvingly the reasoning that "[s]egregation with the sanction of law...has a tendency to [retard] the educational and mental development of Negro children." The Supreme Court concluded, "[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 5/

Brown was constitutionally revolutionary. The process of desegregating American public schools which Brown launched, where segregation had been State imposed, has been and continues to be a slow and painful one requiring the continued and frequently extraordinary intervention of Federal authority. One year after the Brown decision, the Supreme Court issued its Brown II decision that called on lower Federal courts to carry forward their remedies "with all deliberate speed." 6/ The States, which were not directly affected by the Brown decision, however, had no legal obligation to act, even with the slowest, most deliberate speed. They did not. And they would not. 7/

By 1957 the civil rights movement had advanced in the wake of the Brown decision. President Dwight D. Eisenhower in his State of the Union message told the Nation, "[W]e are moving closer to the goal of fair and equal treatment of citizens without regard to race or color, [but] much remains to be done." 8/ The President outlined the provisions of what would later become the Civil Rights Act of 1957. 9/ Among these: creation of the U.S. Commission on Civil Rights and provision

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4 347 U.S. 483, 494.

5/ Id. at 495.

6/ 349 U.S. 294 (1955).

7/ U.S., Commission on Civil Rights, Twenty Years After Brown (1974), pp. 16-17, (hereafter cited as Brown Report).

8/ Annual Message to the Congress on the State of the Union, PUB. PAPERS 17, 23 (Jan. 10, 1957).

9/ Pub L. No. 85-315, 71 Stat. 634 (codified at 42 U.S.C. §§1971, 1975(e), 1995 (1976)).

for an Assistant Attorney General for Civil Rights. 10/ Events would underscore President Eisenhower's assertion that "much remains to be done." The Brown decision's promise of equal opportunity in education was not self-fulfilling and would not by itself overcome determined resistance by those who continued to cling to the philosophy of white supremacy. Local resistance often sought to prevent black children from attending integrated schools. 11/ Ultimately, as in Little Rock, the authority of the Federal government--through the courts with U.S. Marshals and federalized National Guard troops--was required to secure rights to equal treatment which states and localities would not act to protect.

Only two decades ago, four black college students sat down at a lunch counter in North Carolina and waited to be served. They were refused. They continued to wait and, thus, began the "sit-in" movement that was directed at changing local practices and customs which maintained racial segregation.

10/ A major recommendation of the Eisenhower administration civil rights program called for the enactment of legislation empowering the Federal Government to seek preventive judicial relief in civil rights cases. Annual Message to the Congress on the State of the Union, PUB. PAPERS 17, 23 (Jan. 10, 1957). To this end, Title III of the House version of the Civil Rights Act of 1957 (H.R. 6127) included a provision authorizing the Attorney General of the United States to file a civil action seeking preventive relief, including injunctive relief, where "any persons have engaged or there are reasonable grounds to believe that any persons are about to engage in any acts or practices which would give rise to a cause of action pursuant to" 42 U.S.C. §1985 [which provides individuals the right to sue for redress of injuries resulting from conspiracies to violate their constitutional and civil rights]. 103 CONG. REC. 9183 (1957); See also H.R. REP. NO. 291, 89th Cong., 1st Sess., reprinted in [1957] U.S. CODE CONG. & AD NEWS 1966, 1975. This provision was included in the bill that passed the House of Representatives by a vote of 286-126 (165 Republicans and 121 Democrats voting for passage and 19 Republicans and 107 Democrats voting against). Id. at 9518. However, the provision was deleted by the Senate by a vote of 52-38 (18 Republicans and 34 Democrats voting for deletion and 26 Republicans and 12 Democrats voting against). Id. at 12565. The House later agreed to the deletion of this provision by a vote of 279-97 (148 Republicans and 131 Democrats voting for the deletion). Id. at 16112-13.

11/ Brown Report, pp. 17-18.

Civil rights demonstrations, frequently involving non-violent civil disobedience tactics, were mounted in the South in the period from 1960 to 1963 and ultimately occurred in all parts of the country. As white resistance increased, the depth of the "American dilemma" 12/ in the area of race was revealed. The Federal Government was soon called on repeatedly by courts and citizens to act in securing fundamental constitutional rights that states and localities would not protect. At the end of President Eisenhower's term in office, Congress passed the Civil Rights Act of 1960 13/ to protect the right of black citizens in the South to vote. Within 2 months of his inauguration in 1961, John F. Kennedy issued Executive Order 10925 establishing the President's Committee on Equal Employment Opportunity. 14/ The Congress Of Racial Equality (CORE) began in 1961 a series of "Freedom Rides" through the South to demonstrate the extent of the segregation faced by blacks. They were met by violence. Southern resistance was so enduring that in 1962 President Kennedy was forced to use Federal troops to enforce James Meredith's right to attend the University of Mississippi. As the NAACP Legal Defense and Educational Fund and other rights groups moved to attack segregation in the North, it became clear that the civil rights movement was challenging a national problem, not one simply confined to the South. 15/

A crucial turning point in the civil rights movement occurred in Birmingham, Alabama. Civil rights demonstrators focused on desegregating public facilities and ending discriminatory hiring practices. Their demands emerged as the concrete recognition that equality, in fact, required complete integration of black Americans into all parts of the American economy and the larger society. Birmingham represents the movement's quantum leap from demanding legal equality to demanding equality of opportunity manifested in employment and earnings. Bayard Rustin later recalled:

12/ Gunnar Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (New York: Harper, 1944).

13/ Pub. L. No. 86-449, 74 Stat. 86 (current version codified at 42 U.S.C. §1971(c), (e), (f), 1974-1974(c) (1976); 20 U.S.C. §§241(a), 241(d), 640, (1976); 18 U.S.C. §837, 1074, 1509 (1976)).

14/ Exec. Order No. 10925, 3 C.F.R. 448 (Compilation 1964). The Committee was charged with investigating complaints of employment discrimination. Federal contractors and unions were required to demonstrate nondiscrimination in employment. The Presidential Committee recommended contract cancellation and debarment from future Federal contracts if contractors or unions failed to comply with the nondiscrimination mandate.

15/ Brown Report, p. 20.

> [It] was also in this most industrialized of Southern cities...the single issue demands of the movement's classical stage gave way....No longer were Negroes satisfied with integrating lunch counters. They now sought advances in employment, housing, school integration, police protection, and so forth....
>
> At the same time, the interrelationship of these apparently distinct areas became increasingly evident. What is the value of winning access to public accommodations for those who lack money to use them? 16/

Civil rights demonstrations in Birmingham lasted 2 months; 3,000 demonstrators were arrested as local authorities reacted to the protestors with violence and intransigence. After a settlement of major grievances was negotiated, the uneasy peace that followed was fostered and enforced by the Federal Government. 17/

The end of the Birmingham confrontation made it evident that as the civil rights movement succeeded in ending some of the most repugnant Jim Crow practices, it was still confronted by entrenched discrimination and segregation in employment, education, and housing. Federal intervention was increasingly sought by black citizens. In this climate, another dramatic encounter occurred as the U.S. District Court for the Northern District of Alabama ordered two black students admitted to the University of Alabama. The Governor of Alabama refused and publicly declared that he would bar their registration at the university. President Kennedy responded by federalizing the Alabama National Guard. Deputy Attorney General Katzenbach delivered the President's cease and desist order to the Governor on the steps of the university. The students were admitted. 18/

16/ Bayard Rustin, "From Protest to Politics: The Future of the Civil Rights Movement," in Down the Line, The Collected Writings of Baynard Rustin (Chicago: Quadrangle Books, 1971) p. 111.

17/ Brown Report, pp. 71-72.

18/ Brown Report, p. 83.

President Kennedy stressed that he was acting to fulfill the promise of American freedom. He declared the commitment of the Federal Government to ending discrimination and segregation and called upon Congress to pass legislation to fulfill the meaning of equal opportunity:

> We preach freedom around the world, and we mean it, and we cherish our freedom here at home, but are we to say...that this is a land of the free except for the Negroes; that we have no second-class citizens except Negroes; that we have no class or caste system, no ghettoes, no master race except with respect to Negroes?
>
> Now the time has come for this Nation to fulfill its promise. 19/

What that promise was in the view of the victims of discrimination would soon be made clear. On August 28, 1963, 200,000 people from all over the nation assembled in Washington, D.C., to demonstrate for freedom and dignity. An observer described the event:

> At midday the mass of humanity began to move down Constitution and Independence Avenues, nearly a mile, for a ceremony and speeches. Marchers carried banners and signs with various slogans, many calling for FREEDOM NOW, DECENT HOUSING NOW, and JOBS AND FREEDOM NOW. Placards urging NO MORE DOUGH FOR JIM CROW were aimed at government support of segregated activities. 20/

It was during the march on Washington that the Rev. Martin Luther King, Jr., gave his famous "I have a dream" speech.

It was almost 10 years since Brown, and the demands before the government to fulfill the promise of the Civil War amendments had finally been vigorously articulated: removal of legal discrimination and Jim Crow practices; vigorous Federal protection; and equal access to all the fruits of a free society.

19/ Radio and Television Report to the American People on Civil Rights, PUB. PAPERS 468 (June 11, 1963).

20/ Brown Report, p. 86.

The Nation responded. The Civil Rights Act of 1964 accomplished major legislative objectives of the civil rights movement. It provided additional protection for the right to vote, prohibited employment discrimination, called for equal access to public facilities, and outlawed discrimination by recipients of Federal financial assistance. 21/

The passage of the Civil Rights Act of 1964 was followed by the Voting Rights Act of 1965 22/ and the Fair Housing Act of 1968. 23/ These marked the continuing task of moving equality as a legal concept into the realities of daily life in the United States.

The civil rights movement had a profound effect. In pointing to the issue of race, it inevitably exposed the persistence of debilitating economic poverty in the midst of American affluence. Bayard Rustin summed up the issues the movement for equality raised:

> The revolutionary character of the Negro's struggle is manifest in the fact that this struggle may have done more to democratize life for whites than for Negroes. It was not until Negroes assaulted *de facto* school segregation in the urban centers that the issue of quality education for *all* children stirred into motion. Finally, it seems reasonably clear that the civil rights movement, directly and through the resurgence of social conscience it kindled, did more to initiate the war on poverty than any other single force. 24/

21/ 42 U.S.C. §§2000f, 2000e, 2000a, 2000b, 2000d (1976).

22/ Pub. L. No. 89-110, 79 Stat. 437 (1965), as amended by Pub. L. No. 91-285, 84 Stat. 314 (1970) and Pub. L. No. 94-73, 89 Stat. 402 (1975) (codified at 42 U.S.C. §§1971, 1973-1973bb (1976)).

23/ Pub. L. No. 90-284, 82 Stat. 81 (1968), as amended by Pub. L. No. 93-283, 88 Stat. 729 (1974); Pub. L. No. 95-251, 92 Stat. 184 (1978); Pub. L. No. 95-454, 92 Stat. 1222; Pub. L. No. 95-598, 92 Stat. 2679 (1978) (codified at 42 U.S.C. §§3601-3619, 3631 (1976 and Supp. III 1979)).

24/ Rustin, *Down the Line*, p. 117.

The war on poverty was spawned by, and responded to, the demands of the civil rights movement to bring to fruition the goals of the Civil War amendments. There was growing recognition within the civil rights movement and in the Federal Government that the legislative achievements of the Civil Rights Acts would not alone be sufficient to wipe out the massive negative legacy of slavery. Even as the most obvious racial barriers were being torn down and overtly racist behavior was reduced, the historical consequences remained. The demand of the civil rights movement for equality in fact as well as in law meant that the effects of past discrimination --inadequate education, unemployment and underemployment, poor health care, and an inadequate supply of decent, safe, and suitable housing--would all have to be attacked.

President Johnson recognized repeatedly in public addresses that the knot of continuing discrimination, the damaging effects of past discrimination, and pervasive minority poverty were all causally joined and self-sustaining. Any prospect of future progress would be compromised by the weight of past inequality. In his 1964 State of the Union Address to Congress he declared:

> Let this session of Congress be known as the session which did more for civil rights than the last hundred sessions combined...as the session which declared all-out war on human poverty and unemployment....
>
> [M]any Americans live on the outskirts of hope--some because of their poverty, and some because of their color, and all too many because of both.
>
> The cause may lie deeper--in our failure to give our fellow citizens a fair chance to develop their own capacities, in a lack of education and training, in a lack of medical care and housing, in a lack of decent communities.... 25/

President Johnson stressed that black Americans are trapped in an "inherited gateless poverty of a particularly stifling form."

25/ Annual Message to the Congress on the State of the Union, PUB. PAPERS 112 (Jan. 8, 1964).

> For Negro poverty is not white poverty. Many of its causes and many of its cures are the same. But there are differences--deep, corrosive, obstinate differences--radiating painful roots into the community, and into the family, and the nature of the individual....
>
> These differences are not [the result of] racial difference. They are solely and simply the consequences of ancient brutality, past injustice, and present prejudice. 26/

He described racism and the unique poverty it breeds as "a seamless web" and added that poverty and racism "cause each other. They result from each other. They reinforce each other." 27/

The President underscored in a 1965 address that the cumulative effects of racism and poverty would not be overcome simply or easily.

> [F]reedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please.
>
> You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "You are free to compete with all the others," and still justly believe that you have been completely fair. 28/
>
> It is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates.

26/ Commencement Address at Howard University: "To Fulfill These Rights," PUB. PAPERS 635, 638 (June 4, 1965).

27/ Ibid.

28/ Ibid., p. 636.

> This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result. 29/

In 1966 President Johnson convened a White House Conference on Civil Rights. The conference was the culmination of a year of intensive study by hundreds of individuals and representatives of organizations. The 2500 delegates who attended represented a broad cross-section of the nation; public officials and private citizens; representatives of business and labor; persons from cities and rural areas; religious leaders and civil rights workers. 30/ The Conference recommended specific actions to be taken by the Federal Government to expand the role of blacks in the Nation's economic system and called for full employment as a prerequisite to economic integration and equal opportunity. It urged the creation of employment and business assistance programs to reduce unemployment 31/ and create economic expansion. 32/ The White House Conference also called for the strengthening of the employment antidiscrimination provisions of Title VII of the Civil Rights Act of 1964 33/ and greater efforts by the Federal Government in achieving desegregation of the Nation's public schools. 34/

The White House Conference urged Congress to pass a fair housing act to ensure nondiscrimination in housing. In addition, the conferees recommended full funding for a housing rent supplement program and Federal effort to construct 1 million new units and repair 2.5 million units of rural

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29/ Ibid.

30/ U.S., White House Conference on Civil Rights,"To Fulfill These Rights" (1966), pp. 1-2 (hereafter cited as Conference Report).

31/ Ibid., p. 160.

32/ Ibid.

33/ Ibid., pp. 162-163.

34/ Ibid., p. 166.

housing. 35/ Finally, the Conference recommended a policy of desegregating public housing and requested that public housing be constructed in the future on scattered sites throughout communities rather than being concentrated in one area. 36/

Subsequent legislative programs to promote equal oportunity for racial minorities and other disadvantaged groups embodied many of the concepts endorsed at the White House Civil Rights Conference. Not all of the programs were passed as part of the Johnson administration's war on poverty, but all have their roots in the civil rights movement, and there was consensus among many elected officials that the Federal Government had the moral obligation to promote "equality as a fact and equality as a reality."

President Johnson emphasized that the achievement of equal opportunity in the United States would not come solely through the passage of civil rights legislation. In a 1966 message to Congress he wrote:

> The time has passed when we could realistically deal effectively with racial problems by the passage of what could be strictly defined as civil rights laws.
>
> ...[T]he most disturbing current measures of the impact of discrimination are [the] economic facts that cover the entire Nation....
>
> Poor housing, unemployment, and poverty, while they affect racial minorities particularly, will not be defeated by new civil rights laws. Thus, the programs that Congress has adopted go far beyond the vindication of civil rights.
>
> The Elementary and Secondary Education Act of 1965 will enrich the quality of our public schools....
>
> The Housing Act of 1965 will provide part of the decent low- and middle-income housing our cities desperately need....

35/ Ibid., pp. 168-169.

36/ Ibid., p. 169.

> Amendments to the Manpower Development and Training Act adopted in 1965 will help unskilled Negroes, as well as whites, prepare for a role in the economies of today and tomorrow....
>
> We do not call any of these "civil rights programs." Nevertheless, they are crucial, and perhaps decisive, elements in the Negro American's long struggle for a fair chance in life. 37/

Congress responded to President Johnson's request to add fair housing legislation to the Federal civil rights arsenal. Title VIII of the Civil Rights Act of 1968 38/ prohibited most forms of private and public housing discrimination in the United States 39/ and required the U.S. Department of Housing and Urban Development to act "affirmatively" to promote equal housing opportunity. 40/ Congress continued in its legislative efforts to promote decent, desegregated housing with the passage of the Housing and Community Development Act of 1974. 41/ That same year Congress also prohibited discrimination on the basis of race, color, religion, sex, marital status, national origin, and age in any credit transaction 42/ by the Equal Credit Opportunity Act of 1974, as amended. 43/ Congress also continued its assault on segregation and discrimination in education with the Bilingual Education

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37/ Special Message to the Congress Proposing Further Legislation to Strengthen Civil Rights, PUB. PAPERS 466-467 (Apr. 28, 1966).

38/ Pub. L. No. 90-284, tit. VIII, 82 Stat. 81 (1968).

39/ At about the same time, the Supreme Court of the United States held that housing rights guaranteed by the Civil Rights Act of 1966 extended to private acts of discrimination in the sale or rental of property, and were not limited to officially-sanctioned acts of discrimination. Jones v. Mayer, 392 U.S. 409 (1968).

40/ 42 U.S.C. §3608(d)(5) (1976).

41/ Pub. L. No. 93-383, 88 Stat. 633 (1974).

42/ 15 U.S.C. §1691(a)(1) (1976).

43/ Pub. L. No. 93-495, tit. V, 88 Stat. 1521, as amended by Pub. L. No. 94-239, §§2-7, 90 Stat. 251 (codified at 15 U.S.C. §§1691-1691f (1976)).

Act of 1969, 44/ which provides special assistance to children of limited English speaking ability. 45/ The Emergency School Aid Act of 1972 46/ provides school districts with financial assistance to assist in eliminating racial segregation, discrimination and isolation in the Nation's public schools. 47/ The Equal Educational Opportunity Act of 1974 48/ prohibits State or local educational agencies from denying equal educational opportunities to individuals because of their race, color, sex, or national origin. 49/ Further, the Supreme Court of the United States continued to be confronted with cases involving the perpetuation of dual school systems proscribed two decades earlier in *Brown*. For example, in *Swann v. Charlotte-Mecklenburg Board of Education*, 50/ the Court upheld the use of court-ordered busing to achieve integrated schooling.

Congress, and the executive branch under President Nixon, also moved to help black- and minority-owned businesses with financial and technical assistance. 51/ Programs were enacted

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44/ Pub. L. No. 89-10 as amended by Pub. L. 90-247, Jan. 2, 1968, 81 Stat. 816 and reenacted by Pub. L. 93-380, Aug 21, 1974, 88 Stat. 503 as amended by Pub. L. No. 95-561, Nov. 1, 1978, 92 Stat. 2258 (codified at 20 U.S.C. §§3221-3261 (Supp. III 1979)).

45/ For a more thorough discussion of the Bilingual Education Act of 1969 and its purposes, see the "Bilingual Education Act section in Chapter 4.

46/ Pub. L. No. 92-318, tit. VII, 86 Stat. 354 (1972) replaced by Pub. L. No. 95-561, tit. VI, 92 Stat. 2252 (1978) (codified at 20 U.S.C. §§3191-3207 (Supp. III 1979)). For a more detailed discussion of this law, see the "Emergency School Aid Act" section of Chapter 4.

47/ 20 U.S.C. §3192(b)(Supp. III 1979).

48/ Pub. L. No. 93-380, tit. II, 88 Stat. 514, (codified at 20 U.S.C. §§1228, 1701-1710, 1712-1718, 1720, 1721, 1751-1758 (1976 & Supp. III 1979)).

49/ 20 U.S.C. §1703 (1976).

50/ 402 U.S. 1 (1971).

51/ For example, see the "Small Business Administration Programs" section in Chapter 4.

or strengthened to rejuvenate cities and rural areas 52/ and provide needed health care to the underserved poor, comprised predominately of minorities. 53/

Coverage of Federal employment anti-discrimination laws was also expanded. Title VII of the Civil Rights Act of 1964 was extended to most employees of State and local governments 54/ and many Federal employees. 55/ In *Griggs v. Duke Power Co.*, 56/ the Supreme Court of the United States construed Title VII to apply to arbitrary employment practices that have an adverse impact on minorities. In a trilogy of recent cases, the Court also accepted the concept of temporary, voluntary, race-conscious affirmative action as a means of combating racial discrimination and its legacy. 57/

52/ The Housing and Community Development Act of 1974, Pub. L. No. 93-283, 88 Stat. 633; as added Pub. L. No. 94-375, 90 Stat. 1076 (1976); Pub. L. No. 95-128, 91 Stat. 1111 (1977); as amended, Pub. L. No. 95-557, 92 Stat. 2083 (1978); Pub. L. No. 96-153, 93 Stat. 1102 (1979); Pub. L. No. 96-399, 94 Stat. 1614 (1980) (codified at 42 U.S.C.A. §§5301-5320 (1977 and Supp. 1980)). For a more thorough discussion of the Housing and Community Development Act of 1974, see the "Federally Assisted Housing Programs" section in Chapter 4.

See also the Public Works and Economic Development Act of 1965, Pub. L. No. 89-136, 79 Stat. 552; as amended by Pub. L. No. 94-487, 90 Stat. 2331 (1976) (codified at 42 U.S.C.A. §3121-3246h (1977 and Supp. 1980)).

53/ Special Health Revenue Sharing Act of 1975, Pub. L. No. 94-63, 89 Stat. 304. For a more detailed discussion of this legislation, see the "Community Health Centers" section in Chapter 4.

54/ 42 U.S.C. §§2000e(a)-(b), 2000e-2 (1976).

55/ 42 U.S.C. §2000e-16(a) (1976), as amended by the General Accounting Office Personnel Act of 1980, Pub. L. No. 96-191, §8(g), 91 Stat. 34.

56/ 401 U.S. 424 (1971).

57/ Regents of the University of California v. Bakke, 438 U.S. 265 (1978); United Steelworkers of America v. Weber, 443 U.S. 193 (1979); Fullilove v. Klutznick, ___ U.S. ___, 100 S.Ct. 2758 (1980).

Much of this legislative activity was achieved with bipartisan support. In addition, Presidents of both parties took steps to strengthen and improve the Federal civil rights enforcement effort. For example, President Richard M. Nixon issued Executive Order No. 11478 requiring Federal executive departments and agencies to establish affirmative equal employment opportunity programs. 58/ The Carter administration reorganized and consolidated much of the Federal civil rights enforcement machinery to improve efficiency and eliminate duplication and waste. 59/

The effects of the civil rights movement of the 1960s and 1970s on the Nation were of historic proportion. The package of civil rights laws and social and economic programs represented nearly as dramatic a shift in our national laws as had the Civil War amendments. The Federal Government once again made and enforced constitutional promises of civil rights. Furthermore, these legal rights were supplemented by federally sponsored social and economic opportunities designed to overcome the barriers left behind by segregation, subordination, and white supremacy. Spurred by the civil rights movement's demand for a fair chance, this new legislation prohibited arbitrary discrimination against other groups, including women, the elderly, and the handicapped, long kept in inferior positions and victimized by prejudicial stereotypes. 60/

58/ Executive Order No. 11478, 3 C.F.R. 803 (1966-1970 Compilation).

59/ Reorganization Plan No. 1 of 1978, 3 C.F.R. 321 (1978 Compilation), reprinted in 5 U.S.C. app. at 355 (Supp. III 1979); Exec. Order No. 12067, 43 Fed. Reg. 28967 (July 5, 1978).

60/ Prohibitions against sex discrimination are part of many Federal statutes, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2 (1976); the Equal Pay Act of 1963, as amended, 29 U.S.C. §206(d) (1976); and Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 (1976).

Discrimination against the elderly was combated with the Age Discrimination Act of 1975, 42 U.S.C. §§6101-6107 (1976 & Supp. III 1979); and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§621-634 (Supp. III 1979).

Congress also sought to protect the handicapped from arbitrary discrimination through the Architectual Barriers Act of 1968, as amended, 42 U.S.C. §§4151-4157 (1976); and through Title V of the Rehabilitation Act of 1973, as amended, 29 U.S.C.A. §§791-794c (1974 & Supp. 1976-80 & Supp. No. 4 1981).

The Federal Government became the recognized leader in seeking to eliminate the vestiges of past discrimination and in providing opportunities for social, economic, and political power formerly available to but a privileged few.

Within the past two decades these laws have begun to transform the Nation. Much has been done by the Nation in acting to counter discrimination and to achieve equality of opportunity. Data demonstrate that blacks have made significant progress in voting rights, education, employment, and family income since 1960. The progress toward equal opportunity, however, cannot be measured solely by comparing today's social indicators for racial minorities with the figures of 20 years ago. Such numbers show how far blacks have had to come, not how far they have to go to attain equality in fact. In most areas of our society, even with significant progress, blacks remain behind in relative terms.

Data 61/ show that black voter registration in 11 Southern States more than doubled between 1960 and 1976, rising from 29.1 percent to 63.1 percent. Comparable white voter registration went from 61.1 percent to 67.9 percent. 62/ The results of this increased black voter registration are evident in the rising number of elected black officials. In 1964, there were only 104 black elected officals in the United States; by July 1979, there were 4,584. This figure, however, represents only approximately 1 percent of all elected officals in the United States. 63/

61/ This Commission's report, Social Indicators of Equality for Minorities and Women (1978), provides statistical data for blacks, Mexican Americans, Japanese Americans, Chinese Americans, Pilipino Americans and Puerto Ricans, males and females and, for comparative purposes, for whites who are not of Hispanic origin. Ibid, p. 3. Since the data presented in that report covers only 1960, 1970 and 1976, more recent Census Bureau data is also discussed below. Care should be used in interpreting the data, however. The Census Bureau data is not always broken down into the same minority groups and the Bureau's definition of "white" may or may not include persons of Hispanic origin depending upon the particular data.

62/ U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States (1980), p. 514 (hereafter cited as Statistical Abstract, 1980).

63/ U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States (1979), pp. 510, 512.

Blacks and other minorities have also made great strides in educational attainment and in reducing their high school dropout rate, yet they continue to trail whites in both categories. The high school completion rates for black, Mexican American, and Puerto Rican males, 20 to 24 years of age have risen steadily since 1960, but by 1976, they remained 26 percent to 15 percent less likely to complete high school. 64/ By other measures, the black dropout rate from high school has improved, declining from a staggering 21.6 percent of all those between the ages of 14 to 24 in 1968 to 17.5 percent in 1979. The comparable dropout rate for whites has also improved, from 11.9 percent in 1968 to 11.5 percent in 1979. 65/

Perhaps the most dramatic evidence of the paradox of minority progress is that despite an almost three-fold increase from 1960 to 1976 in the number of male blacks, Puerto Ricans, and Mexican Americans 25 and over who had completed 4 or more years of college, whites remained 3 to 5 times as likely to have completed college. 66/ Moreover, a recent study by this Commission demonstrated that blacks in 1976 with a high school diploma were about 50 percent more likely to be overqualified in their present occupations than high school educated whites. At the college level, blacks were about 25 percent more likely to be overqualified. 67/

Women and minorities are more likely to be unemployed and to have less prestigious occupations. Blacks and other minorities of both sexes had approximately twice the unemployment of majority males from 1970 to 1979. 68/ For those in the labor force 69/ in 1976, 47.8 percent of black male teenagers, 51.3 percent of black female teenagers, and 55.2 percent of Puerto Rican male teenagers were unemployed, compared to 15 percent

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64/ Social Indicators, p. 12.

65/ Statistical Abstract, 1980, p. 164.

66/ Whites 25 or over remained more than twice as likely to have completed four or more years of college in 1979 than blacks or those of Hispanic origin. Statistical Abstract, 1980, p. 149.

67/ Social Indicators, p. 17.

68/ Statistical Abstracts, 1980, p. 407.

69/ The term "labor force" includes those with jobs and those looking for jobs.

unemployment among majority male teenagers. 70/ In 1980 black males and black females between the ages of 16 and 19 had unemployment rates of 34.9 percent and 36.9 percent respectively. 71/

Minorities and women have less per capita household income and a greater likelihood of being in poverty. Median household per capita income for 1959, 1969, and 1975 shows that most minority- and female-headed households have only approximately half the income that is available to majority households. 72/

In addition, in 1975, families headed by blacks, Mexican Americans, and Puerto Ricans, regardless of the sex of the family head, were more than twice as likely to be in poverty as majority-headed families, and comparable female-headed families were over five times as likely to be in poverty as majority-headed families. 73/ In 1979, 27.6 percent of black families lived in poverty compared with 6.8 percent of white families. 74/

Although some observers assert that the burden of race is no longer a relevant issue in public policy formulation, it is obvious that discrimination and segregation have not disappeared from American life. The statistical evidence documents this. Finally, the complaints to government agencies and findings of the courts all reveal the prevalence of racial discrimination and segregation as continuing national problems. To ignore these problems and the persons affected by them while restructuring the Federal budget is to turn the Nation aside from both its constitutional obligations and the unfinished history that began in the early Reconstruction era efforts to aid the newly freed to achieve their rightful place in American society.

70/ Social Indicators, p. 32.

71/ U.S., Economic Report of the President (1981), p. 269 (hereafter cited as Economic Report of the President). The comparable white teenage unemployment rates for 1980 were 16.2 percent for males and 14.8 percent for females. Ibid.

72/ Social Indicators, p. 50.

73/ Social Indicators, p. 62.

74/ Economic Report of the President, p. 262.

Chapter 3
The Federal Civil Rights Enforcement Effort

Background

Civil rights enforcement efforts by the executive branch are tangible expressions of the Federal Government's commitment to the promises and principles of the Civil War amendments. Governed by statutes, regulations, Presidential orders, and judicially-interpreted mandates of the Constitution, Federal agencies have developed a variety of systems and procedures for enforcing these civil rights laws.

Enforcement by administrative proceedings or court action may result from an individual citizen's filing a complaint or from a Federal agency's systematic investigation to determine whether those subject to civil rights obligations are complying with legal requirements. Through such compliance reviews, agencies are able to focus scarce enforcement resources on combating industry-wide abuses (frequently referred to as "systemic" discrimination), which may not be evident or capable of being resolved in the context of an individual complaint. The threat of such actions serves as an important catalyst or spur to voluntary compliance. To encourage these voluntary efforts, many Federal agencies provide those who voluntarily act in furtherance of civil rights objectives with information and technical assistance. Experience over the last decade has shown that no single Federal enforcement mechanism, procedure, or approach is a completely effective law enforcement tool. A range of complementary devices is needed.

Because of the importance of the Federal role in securing civil rights, this Commission during the past decade conducted a series of comprehensive studies [1] on the efforts of Federal agencies charged with enforcing civil rights laws. The Commission found that, despite the impressive array of civil rights legislation, strong remedial measures by the agencies were needed to make these laws a reality. The Commission also discovered that the Federal Government's civil rights enforcement efforts were "so inadequate as to render the laws practically meaningless." 2/ Unfortunately, Federal enforcement was characterized largely by inaction, lack of coordination, and indifference. 3/

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[1] U.S., Commission on Civil Rights, Federal Civil Rights Enforcement Effort (of 1970) (1971); The Federal Civil Rights Enforcement Effort Seven Months Later (1971); The Federal Civil Rights Enforcement Effort: One Year Later (1971); The Federal Civil Rights Enforcement Effort--A Reassessment (1973); The Federal Civil Rights Enforcement Effort (1974); The Federal Civil Rights Enforcement Effort--1977--To Eliminate Employment Discrimination: A Sequel (1977); The Federal Housing Enforcement Effort (1979).

Some of the Commission's basic concerns have included the following:

1. Lack of adequate resources for enforcement -- Government-wide, funding and staff for the offices with civil rights enforcement responsibility have been insufficient. Furthermore, civil rights enforcement staffs often have lacked the rank and authority needed to carry out their responsibilities.

2. Lack of Government coordination -- Various Government agencies have failed to provide for coordination of overlapping responsibilities, and conflicting efforts have seriously weakened Federal civil rights enforcement.

3. Passive rather than active enforcement -- Many Government agencies have assumed a passive role, relying on ineffective voluntary assurances of compliance or the slow resolution of individual complaints rather than strategically eliminating broad patterns and practices of systemic discrimination.

Recent efforts have shown improvements. For example, the General Accounting Office this year reported to Congress that

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2/ The Federal Civil Rights Enforcement Effort--A Reassessment (1973), p. 1. See also Federal Civil Rights Enforcement Effort (of 1970) (1971), p. xv; The Federal Civil Rights Enforcement Effort Seven Months Later (1971), p. 3; The Federal Civil Rights Enforcement Effort: One Year Later (1971), p. 4.

3/ The Federal Civil Rights Enforcement Effort--A Reassessment (1973), p. 1.

the Equal Employment Opportunity Commission (EEOC) has made many procedural and administrative changes since 1976 that improved its ability to deal with employment discrimination. 4/ In addition, duplicative and overlapping responsibilities have been minimized by consolidation and increased coordination in enforcing nondiscrimination laws. Also, the President recommended and Congress approved a reorganization plan giving EEOC authority over two additional Federal antidiscrimination-in-employment statutes and charging it with coordinating the various Federal programs prohibiting employment discrimination. 5/ Similarly, the Department of Justice was given responsibility for coordinating the implementation of strictures against discrimination in Federal assistance programs. 6/

The Revised Budget Proposals

To determine whether civil rights enforcement efforts are likely to continue to need improvement, the Commission has examined the budget revisions proposed for five agencies that play key roles in enforcing major civil rights laws. One such law is Title VI of the Civil Rights Act of 1964, 7/ which prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving Federal assistance. This includes grants and loans, detail of Federal personnel, use of Federal property, and any other arrangement by which Federal benefits are provided. All Federal agencies that give such assistance have Title VI responsibilities. The Commission has reviewed budget revisions for Offices of Civil Rights (OCR) programs in the Department of Health and Human Services (HHS) and the Education Department (ED), both of which oversee large-scale Federal assistance programs, and the Civil Rights Division of the Department of Justice (DOJ/CRD), which in addition to its many civil rights enforcement obligations is charged with coordinating Title VI compliance programs.

4/ U.S., General Accounting Office, Report to the Congress: Further Improvements Needed in EEOC Enforcement Activities (1981), p. 6 (hereafter cited as GAO Report).

5/ Reorganization Plan No. 1 of 1978, 3 C.F.R. 321 (1978 Compilation), reprinted in 5 U.S.C. app. at 355 (Supp. III 1979); Exec. Order No. 12067, 43 Fed. Reg. 28967 (July 5, 1978). Exec. Order No. 12144, 44 Fed. Reg. 37195 (June 22, 1979), gives EEOC authority to enforce the Equal Pay Act, 29 U.S.C. §206(d) (1976), and the Age Discrimination in Employment Act, 29 U.S.C. §§621-634 (1976 & Supp. III 1979). As discussed below, EEOC also enforces Title VII of the Civil Rights Act of 1964.

6/ Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 4, 1980).

7/ 42 U.S.C. §§2000d-2000d-6 (1976 & Supp. III 1979).

The Commission also has reviewed budget revisions for the Equal Employment Opportunity Commission (EEOC), 8/ which enforces Title VII of the Civil Rights Act of 1964, 9/ barring employment discrimination by most public and private employers and by labor unions. Title VII forbids personnel decisions or classification schemes that deprive individuals of equal employment opportunity because of race, color, religion, sex, or national origin.

Finally, the Commission has reviewed budget revisions for the Office of Federal Contract Compliance Programs of the Department of Labor (DOL/OFCCP), which oversees compliance with Executive orders 10/ prohibiting employment discrimination by Federal contractors. These orders require that Federal contracts include nondiscrimination and affirmative action clauses about employment opportunities offered by contractors.

The administration's proposed budget reductions will adversely affect both the funding and the staffing of the five major civil rights enforcement programs studied. As the following table shows, the administration's revised FY 1982 budget calls for funding three of the five programs at a level below the FY 1981 appropriations level. The revised budget provides for limited increases for two enforcement programs, but at levels so low that they effectively represent actual cuts in real dollars when weighed against inflation.

The table also shows that all five enforcement agencies will have reductions in staffing under the administration's FY 1982 revised budget. All but ED/OCR will lose more than 8 percent of their authorized staff from the FY 1981 level, and staffing for the DOL/OFCCP contract compliance program will be cut almost 15 percent. These cuts may even be greater when the agencies take inflation into account.

8/ 42 U.S.C. §2000e-5(a) (1976).

9/ 42 U.S.C. §§2000e to 2000e-16 (1976 & Supp. III 1979).

10/ Exec. Order No. 11246, 3 C.F.R. 339, 340-47 (1964-65 Compilation); Exec. Order No. 11375, 3 C.F.R. 684, 685-86 (1966-70 Compilation). OFCCP also enforces §503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §793 (1976 & Supp. III 1979), 41 C.F.R. §60-741.25, and section 402 of the Vietnam-Era Veterans Readjustment Assistance Act, 38 U.S.C. §2012 (1976 & Supp. III 1979), 41 C.F.R. §60-250.25.

COMPARISONS IN THE FY 1980, FY 1981, AND PROPOSED FY 1982 FUNDING AND STAFFING OF FIVE CIVIL RIGHTS ENFORCEMENT AGENCIES

Appropriations (Millions)

Agency	FY 1980	FY 1981 **/	FY 1982 Proposed ***/	Difference Between 1981 and 1982	
EEOC a/	$124.6	$141.2	$140.4	-0.8	(-0.6%)
DOJ/CRD b/	15.1	16.9	18.0	+1.1	(+06.5%)
DOL/OFCCP c/	50.1	50.1	48.3	-1.8	(-03.6%)
HHS/OCR d/	(67.4) */	19.0	18.1	-0.9	(-04.7%)
ED/OCR e/	(67.4) */	48.1	49.4	+1.3	(+02.7%)

Authorized Staff Positions

Agency	FY 1980	FY 1981 **/	FY 1982 Proposed ***/	Difference Between 1981 and 1982	
EEOC a/	3,777	3,790	3,468	-322	(-8.5%)
DOJ/CRD b/	436	436	390	- 46	(-10.6%)
DOL/OFCCP c/	1,482	1,482	1,264	-218	(-14.7%)
HHS/OCR d/	(1,771) */	590	524	- 66	(-11.2%)
ED/OCR e/	(1,771) */	1,115	1,070	- 45	(-04.0%)

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*/ This represents the entire FY 1980 figure for the Department of Health, Education and Welfare (HEW). On May 4, 1970, 7 months into the fiscal year, HEW was split into the Department of Health and Human Services (HHS) and the Department of Education (ED). For the remainder of the fiscal year, the Offices of Civil Rights (OCR) within each new department divided the funds and staff positions, with HHS/OCR receiving 33 percent and ED/OCR receiving 67 percent.

FOOTNOTES **/, ***/, and a-e (next page)

(FOOTNOTE CONTINUED)

**/ Under the budget process, FY 1981 appropriations should have been in place by September 30, 1980. Due to controversial issues upon which the respective houses of Congress could not agree, however, many appropriations were not passed by the deadline, and two continuing resolutions extended funding for agencies. Therefore, this column, for three of the agencies, represents the appropriations under a continuing resolution. Of the five agencies, only the EEOC and DOJ/CRD are operating with funds actually appropriated in a bill passed by Congress in late 1980, Pub. L. No. 96-536. Figures include anticipated supplemental appropriations to cover the Federal pay raise that went into effect in October 1980, except in the case of OFCCP, which absorbed the cost of the pay raise from its current funds.

***/ This column represents the administration's proposed budget for FY 1982, as revised in March 1981.

a/ U.S., Equal Employment Opportunity Commission, 1982 Budget (submitted to Congress January 1981), p. 7; 1982 Budget (submitted to Congress March 1981), p. 7; Ken Baker, Assistant to Director, Office of Program Planning and Evaluation, EEOC, interview in Washington, D.C., April 9, 1981; Mary Stringer, Supervisory Budget Analyst, EEOC, telephone interview, May 27, 1981; Lefford B. Fauntleroy, Director, Budget and Finance Division, EEOC, telephone interview, May 27, 1981; Claudia Ingram, professional staff member, Senate Appropriations Subcommittee on State, Justice, Commerce, the Judiciary, telephone interview, May 28, 1981.

b/ U.S., Department of Justice, FY 1981 Budget Request; Proposed FY 82 Budget (Carter); FY 82 Authorization Request (Reagan); Millie Fowble, Budget Officer, CRD, telephone interview, May 27, 1981.

c/ Craig Berrington, Deputy Assistant Secretary for Employment Standards, Statement before House Appropriations Committee on Labor, HHS, Education and Related Agencies, May 8, 1981; M. Stan Kelly, Acting Director, Division of Program Analysis, OFCCP, telephone interview, May 8, 1981; Ezora Smithwiak, Division of Program Analysis, OFCCP, telephone interview, May 27, 1981.

d/ U.S., Department of Health and Human Services, Justifications of Appropriation Estimates for Committee for Appropriations, FY 1982 (March 1981 revision), pp. 81, 84; Sandy Happ, Office of the Secretary, Budget Services, HHS, telephone interview, May 27, 1981.

e/ U.S., Department of Education, 1980 and 1981 Revised Budgets, p. 19; John Seal, Acting Assistant Secretary for Management, Department of Education, Statement on Salaries and Expenses (1982 budget request to Congress), p. 4; U.S., Department of Education Office for Civil Rights, Fiscal Year 1982 Budget, pp. 318, 322, 323; Kassie Billingsley, Chief, Planning and Budgeting Branch, OCR, telephone interview, May 13, 1981.

Federal civil rights enforcement is inherently labor-intensive. Compliance reviews, investigations, litigation, and negotiations occurring throughout the Nation require a sufficient number of adequately trained professionals. Some economies can be and have been achieved by implementing enforcement strategies that focus on systemic discrimination and increased coordination of the various agencies' civil rights efforts. In addition, strong leadership committed to carrying out the enforcement program can inspire greater productivity and effectiveness by enforcement staff. There is no substitute, however, for adequate staffing.

Generally, staffing of civil rights units has been inadequate to meet minimal enforcement of civil rights laws. The Commission on Civil Rights has repeatedly urged both the Congress and successive administrations to provide increased funding for additional staff, 11/ especially for the Civil Rights Division of the Department of Justice. 12/ The staffing reductions, therefore, worsen an already unsatisfactory situation, especially in light of increasing responsibilities.

Staff shortages also lead to a passive enforcement role. Lack of sufficient funding and staffing will diminish the agencies' ability to conduct Federal civil rights compliance reviews. Staff allocations will lead to an emphasis on inefficient individual complaint investigation activities, albeit at a reduced level. Reliance on complaints inevitably places the burden of initiating enforcement action on the victims of discrimination, persons often lacking the requisite resources or familiarity with the law or with the requirements of program operations. Such a focus tends to concentrate enforcement

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11/ See U.S., Commission on Civil Rights, Federal Enforcement Effort (of 1970) (1971), p. 344; The Federal Civil Rights Enforcement Effort--1974: To Provide for Fair Housing (Vol. II, 1974), p. 355; To Ensure Equal Educational Opportunity (Vol. III, 1975), p. 386; To Eliminate Employment Discrimination (Vol. V, 1975), p. 660.

12/ See Arthur S. Flemming, testimony before the House Judiciary Committee Subcommittee on Civil and Constitutional Rights, Mar. 7, 1980. See also Louis Nunez, Staff Director, U.S. Commission on Civil Rights, letter to Senator Birch Bayh, June 10, 1980.

resources on persons who know how to complain and have the skills to work within a bureaucratic system. 13/

Much time and effort may be spent resolving individual complaints that do not indicate systemic problems, and the resolutions, therefore, may have no effect beyond the individual cases. This is a weak approach to law enforcement and does not provide timely justice.

The reduction of compliance reviews and other enforcement activities also undercuts the deterrent effect of those activities by making Federal pursuit less probable. Assurances of compliance, which the law requires of Federal contractors and recipients of financial assistance, become meaningless when there is little credibility to the threat of Federal exposure and sanction.

By diminishing deterrents to discrimination, budget reductions also weaken Federal efforts to encourage voluntary compliance, the primary objective of all Federal civil rights activities. Moreover, reductions in staffing, travel, and other funds will cut technical assistance programming that aids contractors and grant recipients in complying with the antidiscrimination standards of Federal programs.

The budget reductions also will affect the important role played by State and local agencies in the enforcement of civil rights laws. Federal civil rights laws and the creation of a Federal civil rights enforcement apparatus spurred the creation or expansion of State and local civil or human rights agencies and the enactment of State and local laws on nondiscrimination. 14/ Civil rights approaches worked out on the national level by the Federal Government have furthered State and local efforts to identify and solve Federal civil rights problems occurring on the local level. The probability of Federal intervention if successful efforts are not made by local civil rights agencies to correct the local problems has been an important catalyst for State and local civil rights activities. Moreover, the presence of a credible and supportive Federal effort also encourages State and local

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13/ U. S., Commission on Civil Rights, Making Civil Rights Sense Out of Revenue Sharing Dollars (1975), pp. 59-60.

14/ Center For National Policy Review, State Agencies and Their Role in Federal Civil Rights Enforcement (1977), p. 7 (hereafter cited as State Agencies Report).

initiatives to go beyond minimal compliance with Federal civil rights laws and to seek creative local solutions to local problems. As an additional benefit, the activities of State and local agencies free scarce Federal resources to permit concentration of the Federal civil rights effort upon systemic discrimination. 15/

Budget Impact on Civil Rights Enforcement by Five Major Agencies

The proposed budget revisions for five major programs of Federal civil rights enforcement responsibility are discussed below. This discussion does not take into account the situation that would result if currently proposed legislative and executive actions affecting civil rights enforcement are adopted.

Equal Employment Opportunity Commission (EEOC)

The proposed administration budget reductions will result in a reduction in force (layoffs) of 287 positions, or 7.6 percent of the full-time staff. In all, 900 employees will be affected by the cuts, through layoffs, demotions, transfers, or relocations. 16/

Funding and staffing cuts in all likelihood will produce delays in the investigation of old and new complaints. 17/ Delays in eliminating the existing Title VII backlog will prevent EEOC from channeling staff resources to the investigation of systemic cases. Litigation will be restricted as well. Reductions appear likely in the number of EEOC interventions in private lawsuits and in the use of expert witnesses and computerized data analysis. 18/ The revised budget will also limit EEOC's activity under the Federal Government's own equal

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15/ GAO Report, pp. 19-21.

16/ Reginald Welch, information specialist, EEOC, telephone interview of May 25, 1981.

17/ J. Clay Smith, Acting Chairman, Equal Employment Opportunity Commission, testimony before the House Appropriations Committee Subcommittee on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies, Mar. 11, 1981.

18/ Ken Baker, Assistant to Director, Office of Program Planning and Evaluation, EEOC, interview in Washington, D.C., April 9, 1981.

employment opportunity program. Moreover, the decreased resources must be used for increased enforcement functions assigned to EEOC under the Equal Pay Act 19/ and the Age Discrimination in Employment Act. 20/

Department of Justice: Civil Rights Division (DOJ/CRD)

The administration's FY 1982 budget revision will cut the staffing authorization of the Civil Rights Division of the Department of Justice to 390 positions from the FY 1981 level of 436. Even this 436 figure was considerably below the 454 level recommended by the Carter administration, and the new authorization level proposed in the FY 1982 revised budget comes at a time when some DOJ/CRD operating units are assuming increased responsibilities. 21/

In addition, the funding authorization for DOJ/CRD provides only a limited increase over FY 1981, with the result that support costs needed for CRD actions will not be fully available. This will mean, for instance, that the CRD Office of Coordination and Review will not be able to monitor effectively Federal agency enforcement of required nondiscrimination in federally assisted programs. The Office of Coordination and Review will also have inadequate staff to develop monitoring systems for new block grant programming initiatives. 22/ Training for Federal agency civil rights staff will not be carried out under the revised budget for FY 1982. 23/ The administration's budget also proposes cuts in

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19/ 29 U.S.C. §206(d) (1976).

20/ 29 U.S.C. §§621-634 (1976 & Supp. III 1979).

21/ A new statutory requirement directs DOJ/CRD to provide assistance to defendants in lawsuits filed under Pub. L. No. 96-247, the Civil Rights for Institutionalized Persons Act. In voting rights, a significant increase is expected in redistricting changes resulting from the 1980 census. Executive Order 12250 adds clarified responsibility for DOJ coordination of nondiscrimination in Federal program operations and places Section 504 of the Rehabilitation Act of 1973, as amended, and Title IX of the Education Amendments of 1972 under DOJ coordination.

22/ Ted Nickens, Deputy Chief for Program Compliance, Office of Coordination and Review, interview in Washington, D.C., Feb. 12, 1981.

23/ Ibid.

staff devoted to pursuing cases of housing and school discrimination in court. Litigation will be undercut further by the lack of needed funds to support case preparation. 24/

Department of Labor: Office of Federal Contract Compliance Programs (DOL/OFCCP)

The Office of Federal Contract Compliance Programs faces sharp cuts in staffing under the administration's revised budget for FY 1982. Staffing and funding will be reduced below even FY 1980 levels despite the impact of inflation during the intervening period. Authorized staff positions have been cut by 14.7 percent for FY 1982, hampering the investigation of discrimination complaints at a time when the number of such complaints is increasing. As a result, the OFCCP complaint backlog probably will rise to approximately 5,000 cases in FY 1982. 25/ In addition, OFCCP is already behind its own schedule for FY 1981 compliance review activity. This trend is likely to continue into FY 1982 because of the budget reductions proposed by the administration.

The reduced budget also will delay the full development and establishment of a needed comprehensive data processing system that would merge data files and procedural functions. This program would link field offices and headquarters and would substantially increase OFCCP effectiveness. 26/ In addition, all training at OFCCP reportedly has been suspended due, at least in part, to the budget cuts. 27/

24/ U.S., Department of Justice, FY 82 Budget Submission. In its studies, this Commission has consistently found a need to strengthen the civil rights enforcement efforts of Federal agencies and has made many recommendations advocating the allocation of additional resources for civil rights enforcement through litigation. See U.S., Commission on Civil Rights, The Voting Rights Act: Ten Years After (1975), p. 350; U.S. Commission on Civil Rights, The Federal Fair Housing Enforcement Effort (1979), p. 62; Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Testimony before the House Judiciary Committee, Subc. on Civil and Constitutional Rights, "Civil Rights Enforcement Activities of the U.S. Department of Justice," Mar. 7, 1980, p. 5.

25/ Ezora Smithwick, Division of Program Analysis, OFCCP, telephone interviews, Apr. 28 and May 8, 1981.

26/ Ibid.

27/ Ibid.

Department of Health and Human Services: Office for Civil Rights (HHS/OCR)

Although the outgoing administration in its January budget request had proposed a substantial increase in FY 1982 funding for HHS/OCR actions, the current administration's FY 1982 revised budget for HHS/OCR contains about a 5 percent reduction from the FY 1981 level. This budget proposal cuts staff levels for HHS/OCR from 590 positions in FY 1981 to 524 in 1982. 28/ These reductions are proposed at a time when complaints to OCR are on the increase. 29/ In terms of loss of staff, the OCR division that conducts compliance reviews will be hardest hit by the revised FY 1982 budget, losing 41 positions from the 153 proposed in the FY 1981 budget. Technical assistance and voluntary compliance activities by HHS/OCR are also significantly diminished. The FY 1982 budget revision cuts the staffing for technical assistance and voluntary compliance activities from 42 to 33. 30/ This is occurring even though the HHS/OCR technical assistance effort was initially recommended by the General Accounting Office 31/ as one means of overcoming deficiencies in the HHS Title VI program.

Department of Education: Office for Civil Rights (ED/OCR)

For the Department of Education's Office for Civil Rights, the administration's FY 1982 revised budget included $49.4 million, which is a 2.7 percent increase over the FY 1981 level of $46.9 million. Nonetheless, the FY 1982 figures constitute a decrease in real dollars when inflation is taken into account. The net result of the administration's budget cuts will be a

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28/ The Carter administration's FY 1982 budget request had recommended authorization for 690 positions, an increase in staffing of 100 over FY 1981. The revised budget dropped this increase and cut the FY 1981 staffing level a further 11 percent.

29/ Between 1976 and 1980 the number of complaints received by OCR increased from 400 to 1,776, and OCR estimates that 1,900 new complaints will be submitted in FY 1981. U.S., Department of Health and Human Services, Justifications of Appropriation Estimates for Committee on Appropriations (March 1981 revision), p. 86.

30/ Ibid., p. 85.

31/ Ibid., p. 87.

reduction in OCR's staffing ceiling, particularly in the regional offices, which are most immediately responsible for compliance and enforcement actions. The OCR funds for travel (a necessary element of field visits and onsite investigation) during FY 1982 will be kept at the same level as in the 2 previous years, despite rising travel costs, which will reduce OCR's ability to carry out its compliance review program. 32/

The ED/OCR enforcement effort is unique in that both legislation and judicial decisions have established legally binding functions for the office. For instance, pre-grant reviews are required under the Emergency School Aid Act; and the 1977 court order in Adams v. Richardson 33/ requires OCR to process complaints within specified time limits, monitor higher education desegregation, and conduct compliance reviews. The OCR response to budget reductions may be to conduct fewer or more narrowly focused compliance reviews and to reduce technical assistance to fund recipients. OCR's reduced capacity to support voluntary compliance, accompanied by a diminished compliance review effort, will hamper its already limited ability to ensure that local recipients are acting on their own initiative to comply with civil rights requirements. 34/

CONCLUSION

The most tangible manifestation of the Government's commitment to the realization of constitutional and statutory promises of equal opportunity is the way the executive branch carries out the Federal civil rights enforcement effort. The enforcement of civil rights laws requires a proportionately higher level of staffing than some other governmental obligations because law enforcement work necessarily involves a great deal of onsite investigation, negotiation, and litigation by Federal enforcement officials. Some economies may be achieved through strengthening methods for combating systemic discrimination and furthering coordinated enforcement activities. Reductions in resources can also be offset by effective leadership and management that is able to achieve more with less. But even strong measures to enhance the cost effectiveness of enforcement efforts cannot compensate for significant reductions in funding and personnel levels.

32/ Kassie Billingsley, Chief, Planning and Budgeting Branch, OCR, telephone interview, May 13, 1981.

33/ Order, Adams v. Califano, Civ. No. 3095-70, and WEAL v. Califano, Civ. No. 74-1720 (D.D.C., filed Dec. 29, 1977).

34/ Billingsley Interview.

Our Nation now faces a time of scarcity, requiring individuals and governments alike to make the most productive use of limited resources. This Commission does not believe that civil rights problems are solved simply by throwing money at them, even when money is plentiful. But reducing resources for Federal civil rights enforcement programs at a time when they are beginning to show signs of increased effectiveness can only give the message of reduced commitment to the objectives of these programs.

Our review of five major civil rights enforcement programs indicates that the administration's proposed revisions to their budgets will jeopardize recent efforts to improve Federal civil rights enforcement activity. The revisions threaten a significant decrease in Federal civil rights enforcement efforts that may have long-term consequences for the ability of the Nation to implement its constitutional commitment to equal opportunity. The reduction in Federal civil rights enforcement resources to these five agencies (a loss of 697 positions, from 7,413 in FY 1981 to 6,716 in FY 1982, constituting a 9.4 percent reduction) is likely to limit actual enforcement, undercut the deterrent effect of such enforcement by diminishing the credibility of potential Federal liability, and reduce the motivation for and the assistance to those who would undertake self-improvement and voluntary compliance with civil rights obligations.

Chapter 4
Social and Economic Programs

As noted in the previous chapters, the Federal Government, in enacting the Civil War amendments, declared a constitutional promise of equality and undertook the obligation to abolish slavery and eradicate its badges and incidents. The Civil War amendments represent not merely paper guarantees of legal and political rights, but a national policy of full equality. The 100 years of history of that constitutional promise of equality led to Federal recognition of the ineffectiveness of a passive role in fulfilling the national policy. Congress became increasingly aware of not only the need for an effective enforcement mechanism to protect legal and political rights, but also the need for social and economic programs to "root out" discrimination that had become institutionalized, deeply ingrained badges and incidents of slavery. This recognition that the Federal Government had to take the initiative was primarily due to the failure of State and local governments to honor the promise of equality embodied in the Civil War amendments.

Thus the Federal Government developed programs that would enable persons of color to attain the "practical freedom," 1/ i.e., the social and economic equality, that was the spirit and intent of the Civil War amendments. To that end, the Congress, almost 100 years after the passage of those amendments, established several programs to improve conditions for racial minorities as well as all Americans in every facet of our national life. These programs for fulfilling the constitutional promise of equality have known no party lines, supported by both Republican and Democratic administrations.

With the help of legal services agencies, minorities have been able to secure needed legal assistance. As a result of Federal education funding programs, the reading and mathematical abilities of disadvantaged students have improved dramatically. Strides have been made in achieving desegregation in racially isolated schools and thousands of children with limited English proficiency have received educational instruction. Small business and economic development loans, grants and technical assistance have been made available to minorities. Federal programs have resulted in millions of minority Americans being provided housing, health care, employment and job training.

1/ CONG. GLOBE, 39th Cong., 1st Sess. 474 (1866) (remarks of Sen. Lyman Trumball, R-Ill.).

Although progress has been slow, these programs have contributed to the process of breaking down the barriers of past discrimination and its current vestiges. Their legislative histories reveal not only the concern for the implementation of the national policy of equality, but also the continual redesigning and improvement of those programs based on criticisms as to their performance.

In this chapter, the Commission will examine nine programs in the areas of legal services, education, economic development and assistance, housing, and health services that have been targeted for elimination or budget reductions by the administration. 2/ They were selected because they represent a broad cross-section of programs that are fundamental to attaining the constitutional promise of equality. The following analyses document the relationship of the 10 programs to the guarantees of the Civil War amendments and their aid, in human terms, to racial minorities.

The Legal Services Corporation

Since 1965, the Federal Government has funded legal assistance for the poor, initially through the Office of Economic Opportunity and later through the Legal Services Corporation established under the Nixon Administration. With a FY 1980 budget authority of $300 million the Legal Services Corporation, a private, nonprofit, nonmembership corporation, funds 323 independent, primarily local organizations to provide civil legal assistance and education to the poor. With the help of legal services agencies, the poor are able to redress discrimination in employment, education, housing, and credit, 3/ to obtain divorces or child custody, and to enforce their rights under programs that provide food or shelter or otherwise improve their economic conditions. 4/ The Legal Services Corporation provides a means to break the combined

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2/ A sampling of a few smaller programs slated for budget reductions are also noted in the Appendix B.

3/ Approximately 3 percent of the clients' legal problems concerned individual rights or employment discrimination problems. Legal Services Corporation Annual Report (1979), p. 15.

4/ Cases closed in 1980 involved various concerns, including Family Matters, 30.3%; Housing, 17.6%; Income Maintenance, 17.2%; Consumer Finance, 13.7%; Employment, 3.1%; Education, 0.5%; Juvenile, 0.9%; Health, 0.2%; and Miscellaneous, 11.7%. Legal Services Corporation, Characteristics of Field Programs Supported by the Legal Services Corporation: Start of 1981--A Fact Book, February 1981, p. 5 (hereafter cited as Fact Book).

effects of racism and poverty that particularly affect racial minorities who have limited assets and few options as consumers and tenants. Thus, the provision of federally funded legal assistance for the poor remains a key element in combating the legacy of slavery.

The rights of full legal equality guaranteed to the freed slaves and their descendants by the Civil War amendments and the Reconstruction Congress were paper rights, meaningless without access to the courts and other governmental authority to enforce them. Moreover, without access to legal representation such rights effectively ceased to exist. 5/

It is, therefore, not surprising that the first Federal legal aid was started in 1865 by the Freedmen's Bureau, which retained private attorneys to represent newly freed blacks in civil and criminal litigation. 6/

Equal access to the legal system is also an integral part of enfranchising blacks, bringing them into the political process. 7/ Since ours is a society governed by law, where differences are to be settled through reasoned debate in the courts rather than in the street, equal access to the courts is essential. The lesson of the civil disturbances of the 1960s was not lost on the Congress or the President. In passing favorably on the bill establishing the Legal Services Corporation, the House Committee on Education and Labor noted:

> Congress has many times declared its findings in passage of legal services legislation, and the President of the United States has affirmed, that it is in the Nation's interest to encourage and promote the use of our institutions for the orderly redress of grievances....

5/ Roger C. Cramton, "Promise and Reality in Legal Services," Cornell Law Review (1975-76), pp. 674-75; U.S. Office of Economic Opportunity, Law and Poverty: 1965, by Patricia M. Wald (Washington, D.C.: Government Printing Office, 1965), p. 22.

6/ Earl Johnson, Jr., Justice and Reform: The Formative Years of the OEO Legal Services Program (New York: Russell Sage Foundation, 1974), p. 297, n. 11.

7/ Cahn and Cahn, "The War on Poverty: A Civilian Perspective", vol. 73, Yale Law Journal, (1964) pp. 1330-31, 1333, 1340. This article planted the idea that became the legal services program. Johnson, Justice and Reform, pp. 40-41.

> The program has, in the words of President Nixon, reaffirmed faith in our government of laws. [And each case gives] those in need new reason to believe that they too are part of the "system"....During this period we have also learned that justice is served far better and differences are settled more rationally within the system than on the streets.... 8/

As part of its FY 1982 budget reduction, the administration has recommended abolishing the Legal Services Corporation. 9/ The end of federally funded legal assistance would affect most severely the persons of color who comprise over 45 percent of the low-income clients served by the Corporation. 10/ Without the national legal services program, racial minorities would be effectively denied legal representation 11/ and the ability to assert their political rights, to combat current discrimination, and to overcome the poverty that represents the continuing effects of past discrimination. In these ways and more they will become, once again, disenfranchised.

8/ H.R. REP. NO. 93-247, 93d Cong., 2d Sess. (1973), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 3822, 3874-75.

9/ Although the administration proposed the termination of the Legal Services Corporation, it also has proposed the establishment of a social services block grant under which legal services would be one of several activities eligible for funding. Under the proposed block grant, no additional money would be provided for the funding of legal services, nor would states be required to earmark any of the block grant funds for funding legal services. Executive Office of the President, Office of Management and Budget, *Fiscal Year 1982 Budget Revisions: Additional Details on Budget Savings*, April 1981, p. 362.

10/ *Legal Services Corporation Fact Book*, p. 4. The Corporation estimates that funded programs served 1.5 million clients in 1980. Interview with Margaret Walker, Director, Information Unit, Office of Field Services, Legal Services Corporation, Mar. 26, 1981.

11/ The American Bar Association's resolution supporting the establishment of an OEO legal services program acknowledged that efforts of the private bar to provide legal assistance to the needy could not meet the demand for service. Johnson, *Justice and Reform*, p. 63. The bar association maintains this position today. Statement of American Bar Association President William Reece Smith, Jr., *American Bar Association Journal*, vol. 67 (April 1981), p. 436.

Title I of the Elementary and Secondary Education Act

In 1965, the Congress with bipartisan support passed a comprehensive education bill to provide federal financial assistance to school districts with concentrations of children from low-income families. 1/ The funds are used to provide

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1/ Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 ("Title I" was originally designated "Title II" but was renumbered "Title I" by Pub. L. No. 90-247, §§108(a)(2, 110, 81 Stat. 786, 787 (1968); the entire Title was amended by Pub. L. No. 95-561, 92 Stat. 2143 (1978), codified at 20 U.S.C. §§2701-2854 (Supp. III 1979).

The Elementary and Secondary Education Act of 1965 (H.R. 2362) passed the House of Representatives by a vote of 263-153 with 227 Democrats and 36 Republicans voting for the bill and 56 Democrats and 97 Republicans voting against. The bill passed the Senate by a vote of 73-18 with 55 Democrats and 18 Republicans voting for the bill and 6 Democrats and 12 Republicans voting against. 111 CONG. REC. 6152, 7718 (1965).

The Elementary and Secondary Education Act Amendments of 1967 (H.R. 7819) passed the House of Representatives by a vote of 294-122 (184 Democrats and 110 Republicans voting for passage and 37 Democrats and 85 Republicans voting against), and passed the Senate by a vote of 71-7 (46 Democrats and 25 Republicans voting for the bill and 1 Republican and 6 Democrats voting against). The conference report passed the House by a vote of 286-73 (164 Democrats and 122 Republicans voting for and 36 Democrats and 37 Republicans voting against), and passed the Senate by a vote of 63-3 (39 Democrats and 24 Republicans voting for and 2 Democrats and 1 Republican voting against). 113 CONG. REC. 13899, 35734, 37038, 37174-75 (1967).

The Education Amendment of 1978 (H.R. 15) passed the House by a vote of 350-20 (240 Democrats and 110 Republicans voting for and 6 Democrats and 14 Republicans voting against) and passed the Senate by a vote of 86-7 (56 Democrats and 30 Republicans voting for and 1 Democrat, 5 Republicans and 1 Independent voting against). The conference report passed the House by a vote of 349-18 (236 Democrats and 113 Republicans voting for and 5 Democrats and 13 Republicans voting against) and passed the Senate by voice vote. 124 CONG. REC. H6687 (daily ed. July 13, 1978); 124 CONG. REC. S14266 (daily ed. Aug. 24, 1978); 124 CONG. S18573 (daily ed. Oct. 12, 1978); 124 CONG. REC. H13468 (daily ed. Oct. 14, 1978).

compensatory educational programs that address the special needs of educationally deprived children. 2/

Upon the enactment of the Elementary and Secondary Education Act of 1965 (ESEA), President Lyndon B. Johnson remarked: "I think Congress has passed the most significant education bill in the history of Congress. We have made a new commitment to quality and to equality in the education of our young people." 3/

Title I, which primarily provides for compensatory instructional services in reading, mathematics, and language arts, 4/ was funded at $3.2 billion in FY 1980 and at $3.5 billion under the FY 1981 Continuing Resolution. 5/ Although only three percent of the total monies spent across the country for elementary and secondary education are Title I funds, they account for almost one-third of per-pupil expenditures in some of the Nation's poorest school districts. 6/ Title I programs serve between five and seven million children each year in

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2/ Pub. L. No. 89-10, §201, 79 Stat. 27 (1965). The 1965 Act provided that federal aid for educationally deprived children be added as Title II of an earlier Federal financial assistance for local education law (the Act of Sept. 30, 1950, ch. 1124, 64 Stat. 110). In January 1968, Congress officially redesignated the enabling legislation as "Title I" of the Elementary and Secondary Education Act (ESEA). Pub. L. No. 90-247, §§108(a)(2), 110, 81 Stat. 786, 787 (1968).

3/ Remarks to Congress at a Reception Marking the Enactment of the Education Bill, PUB. PAPERS 415 (April 13, 1965).

4/ See National Institute of Education, Evaluating Compensatory Education, An Interim Report (1976), pp. xvii-xx (hereafter cited as Interim Report); U.S. Dep't of Health, Education, and Welfare, TITLE I Elementary and Secondary Education Act Questions and Answers (1979), p. 7. See also: 20 U.S.C. §2722 (Supp. III 1979).

5/ U.S., Dep't of Education, Revised Fiscal Year 1982 Budget (March 10, 1981), Attachment D, p. 23 (hereafter cited as Revised Fiscal Year 1982 Budget).

6/ National Institute of Education, The Compensatory Education Study: Executive Summary (1978) pp. 1, 4 (hereafter cited as Compensatory Education Study).

approximately 90 percent of the Nation's school districts, 7/ but the National Institute of Education has estimated that about one third of all eligible students are not served by the program because of inadequate funding. 8/ School districts in central cities, rural areas, and places with large concentrations of minority students have received the greatest proportion of Title I funds. 9/

Approximately 46 percent of the students participating in Title I programs are minority, with blacks comprising 34.5 percent of the enrollment. 10/

Improved educational opportunity for students attending those schools was a primary thrust of the federal effort to eliminate poverty 11/ and Congress clearly intended the Elementary and

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7/ Statistical data provided by the Office of Education, U.S. Dep't of Education, Authorization, Appropriations, and Participation 1966-1979; Compensatory Education Study, p. 7.

8/ Compensatory Education Study, pp. 8-9.

9/ Ibid., p. 3.

10/ Interim Report, Table III-8, p. III-26. Hispanics comprise 9.8 percent of the enrollment, American Indians and Asians 0.8 percent each, and whites 54 percent. Ibid.

11/ In a statement applauding the approval of the administration's education bill by the full Senate Education Subcommittee, President Lyndon Johnson stated:

> This bill has a very simple purpose. Its purpose is to improve the education of young Americans....
>
> With education, instead of being condemned to poverty and idleness, young Americans can learn skills to find a job and provide for a family....
>
> Poverty will no longer be a bar to learning, and learning shall offer an escape from poverty. We will neither dissipate the skills of our people nor deny them the fullness of a life that is informed by knowledge. We will liberate each young mind in every part of this land to reach to the farthest limits of thought and imagination.

The President's News Conference, PUB. PAPERS 365, 366 (Apr. 1, 1965).

Secondary Education Act of 1965 "to strike a blow at...the root of poverty, educational deprivation." 12/ The strong correlation between educational under-achievement and poverty was highlighted frequently during seven days of hearings before a Senate subcommittee, 13/ which reported favorably on the legislation, describing Title I as "another very potent instrument to be used in the eradication of poverty and its effects" and to help "the schools...become a vital factor in breaking the poverty cycle by providing full educational opportunity to every child." 14/

This legislation also represented "a significant step toward expanding educational opportunities for those to whom education has been an unkept promise" 15/ and a recognition that

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12/ 111 CONG. REC. 5961 (1965) (remarks of Rep. Alphonzo Bell, R--Cal.).

13/ S. REP. NO. 146, 89th Cong., 1st Sess. (1965), reprinted in [1965] U.S. CODE CONG. & AD. NEWS 1446, 1450.

14/ Id., [1965] U.S. CODE CONG. & AD. NEWS at 1450. During the floor debates, Senator Walter Mondale (D--Minn.) echoed these sentiments in his remarks:

> ... I support this proposed legislation because of its effects on children--because of what it will do for the sharecropper's child in South Carolina, the Negro child in Harlem, or the child of Mexican descent in Phoenix--as much as for what it will contribute to the future of the child of a widow in Minneapolis, or the child of an underemployed worker in the cutover area of northern Minnesota, or the child of a struggling farmer on one of Minnesota's smaller farms.
>
> This legislation is for the children. Its purpose is to provide them with an equal chance in life--an equality of opportunity which can be achieved for the underprivileged only through the medium of a better education.

111 CONG. REC. 7571 (1965).

15/ 111 CONG. REC. 6130 (1965) (remarks of Rep. Carl Albert, D--Okla.).

"programs dealing with poverty, education, and race relations are all overlapping and interlocked," and that "to correct the serious problems in our society, we must provide equalization of educational opportunity and increased quality of education at all levels." 16/ The supporters of this legislation viewed programs such as Title I as complements to the struggle to eliminate racial discrimination. 17/

The educational underachievement of low-income children, disproportionately minority, has been a special Title I target over the years. 18/ In addition to concentrating funds in inner-city schools and districts with large minority enrollments, 19/ Federal administrators have encouraged efforts under ESEA to develop project activities that tend to reduce racial isolation in the Nation's schools. 20/ Thus, Title I programs have provided services beyond those that local school districts provide, particularly for children who suffer from both poverty and discrimination. 21/

16/ *Id*. at 5766 (remarks of Rep. Joseph Minish, D--N.J.). Representative Jacob Gilbert (D--N.Y.), in his remarks during the House floor debate on ESEA, stated that "the bill represents...a great step toward providing a better education for millions of children, including minority groups and it will help break the vicious chain of hereditary poverty--the poverty that stems from cultural deprivation." *Id*. at 5970.

17/ For example, former Senator Joseph Montoya (D--N.M.) noted the importance of educational programs in the elimination of discrimination in his remarks on the Senate floor:

> Simply stated, we must guarantee to the young people of this Nation their constitutional right to equal opportunity; and the foundation of all equal opportunity is good schools.

Id. at 7328.

18/ *Compensatory Education Study*, p. 3.

19/ Ibid.

20/ U.S., Commission on Civil Rights, *Racial Isolation in the Public Schools* (1967), p. 187.

21/ *See* U.S. Dep't of Health, Education, and Welfare, *TITLE I/YEAR II*, Second Annual Report of Title I, School Year 1966-67, p. 1.

Recent studies have repeatedly concluded that "Title I programs do improve students' performance in reading and math over the school year; moreover, the most recent study reports that students seem to maintain these increases when they 'graduate' from Title I programs." 22/ One such study found that the reading scores of disadvantaged students

> have increased dramatically over the last ten years. This study, sponsored by the National Institute of Education, first surveyed a nationally representative sample of elementary and secondary students in 1970, and repeated the reading skills survey in 1975 and again in 1980. Overall, the analysis concluded that elementary school students are reading better today than were elementary school children in 1970 and that junior and senior high school students are generally reading as well as their 1970 counterparts. However, those groups which traditionally scored below the national level showed the most impressive gains. Black elementary school students closed the gap between themselves and other elementary students by 6.0 percent. Although still scoring about 11 percentage points below the national average, black 13-year olds narrowed the gap by 3.4 percentage points. 23/

The administration's proposed budget rescission would cut Title I by $878 million in 1981. 24/ The National Urban Coalition estimates that this 25 percent reduction in funding might eliminate as many as 1.5 million children from the programs and substantially reduce the resources available to depressed urban schools with large minority populations. 25/ Cutting a program that demonstrably works to improve student achievement and that currently is unable to serve all eligible students because of inadequacies in existing funding levels can only hamper efforts to eradicate the vestiges of past discrimination.

22/ U.S. Dep't of Education, National Advisory Council on the Education of Disadvantaged Children, Title I, Today: A Fact Book (Washington, D.C., Spring 1981), pp. 1 and 5.

23/ Ibid., p. 5.

24/ Revised Fiscal Year 1982 Budget, Attachment D, p. 23.

25/ National Urban Coalition, Impact of Selected Domestic Program Cuts, Domestic Priorities Group (March 12, 1981), Education Section.

For FY 1982, the administration has recommended that Title I be consolidated with approximately 50 individual education programs into block grants for local and State education. 26/ Under the block grant approach proposed by the administration, States would be free to allocate block grant funds among any of the programs included in the block grant. At the same time, States could choose to drastically reduce or completely eliminate funding for programs, such as Title I, included in the block grant.

26/ Revised Fiscal Year 1982 Budget, pp. 2-3. The majority of Title I provisions would be consolidated under the local block grant. The local education block grant will consolidate over 10 programs in order to provide services to economically disadvantaged and handicapped students, functionally illiterate adults and children in schools undergoing desegregation. The State education block grant will consolidate approximately 35 existing programs. The State grants will provide funds to States for three purposes: 1) for elementary and secondary school improvement at the local level; 2) for services to disadvantaged, handicapped, neglected, and delinquent children in State institutions; and 3) for improvement in State educational agency administration and management. States will decide how to use their funds for these purposes. Ibid. For additional discussion of block grants, see Chapter 5.

The block grant concept is not a new idea for the distribution of Title I funds. During the floor debates over the 1967 amendments to ESEA, Representative Albert H. Quie (R--Minn.) a member of the House Education and Labor Committee, introduced an amendment that would have resulted in block grants to State education departments and would have given States greater control and discretion over the distribution of Title I (and other ESEA categorical grant) funds. 113 CONG. REC. 13611 (1967). That amendment was rejected by the House, Id. at 13845, and the existing categorical grant programs created under Title I were retained, Id. at 13899. In part, the defeat of the amendment can be attributed to the concern that progress in reaching the ESEA goals of eliminating poverty and providing equal educational opportunities would be significantly reduced under block grant funding from what it would be under the categorical grant. As Representative Silvio Conte (R--Mass.) noted in the floor debates on the Quie Amendment:

> The Elementary and Secondary Education Act of 1965 established as its highest priority that assistance be provided to improve the education of the culturally deprived and disadvantaged children of this country. The need for this concentrated assistance is just as great today as it was...when the program was initiated.

(Footnote 26 continued)

> Adoption of the Quie Amendment proposal could very likely result in this concentrated effort becoming significantly diluted. We cannot afford such a dilution.
>
> Providing meaningful education to those children now focused upon by existing law represents the most important step being taken in this country today to eliminate poverty and to provide that everyone in this country has the opportunity for an adequate and satisfactory standard of living. We must complete this concentrated effort without delay....
>
> * * *
>
> The Quie proposal, if adopted, would result in fundamental changes in the procedures which have...become established. It would mean...the loss of the benefits from the investments already made and the experience already gained.... This would be a wasteful step for us to take....

_Id_. at 13620.

Emergency School Aid Act

In 1972, Congress passed the Emergency School Aid Act (ESAA), [1] which provides school districts with financial assistance "to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; to encourage the voluntary elimination, reduction or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students" [2] and to aid school children in overcoming the educational disadvantages of minority group isolation.

Since 1973, ESAA projects have totalled more than $200 million annually. [3] The basic grant component awards approximately 350 grants annually to school districts for projects serving more than 3 million students. [4] Additional grants are available for magnet school programs, educational television projects, [5] and special projects such as efforts to reduce minority student suspension and expulsion levels. [6]

ESAA and other Federal education programs recognize the fundamental importance of education to the attainment of equal opportunity and advancement in American society. "As the principal value-bearing institution which touches at one time or another, everyone in our society, the school is crucial in determining what kind of country this is to be. If in the future the adults in our society who make decisions [affecting the lives of others] are to be less likely to make such decisions on the basis of race or class, the present cycle must be broken in classrooms...in which children of diverse backgrounds can come to know one another." 7/

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[1] Emergency School Aid Act, Pub. L. No. 92-318, tit. VII, 86 Stat. 354 (1972) replaced by Pub. L. No. 95-561, tit. VI, 92 Stat. 2252 (1978) (codified at 20 U.S.C. §§3191-3207 (Supp. III 1979)).

[2] 20 U.S.C. §3192(b)(Supp. III 1979).

[3] U.S., Department of Health, Education and Welfare, Office of Education, Bureau of Elementary and Secondary Equal Educational Opportunity Programs, table, "Obligational Authority for Desegregation Assistance, Fiscal Years 1965-1977."

[4] Executive Office of the President, Office of Management and Budget, Catalog of Federal Domestic Assistance, 1980, Program Description §13.525.

[5] H.R. REP. No. 95-1137, 95th Cong., 2d Sess. 92, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 4971, 5062.

[6] Executive Office of the President, Office of Management and Budget, Catalog of Federal Domestic Assistance, 1980, Program Description §13.532.

When the Supreme Court of the United States ruled in 1954 that maintaining segregated public school systems constituted a deprivation of rights protected by the 14th amendment, 8/ it set in motion the process of school desegregation that the Emergency School Aid Act was designed to facilitate. 9/ When President Richard Nixon transmitted the proposed legislation to Congress in 1970, he stated:

> The process of putting an end to what formerly were deliberately segregated schools has been long and difficult. The job...is not yet completed. In many districts, the changes needed to produce desegregation place a heavy strain on the local school systems, and stretch thin the resources of those districts required to desegregate....

7/ U.S. Commission on Civil Rights, Racial Isolation in the Public Schools, Summary of a Report (1967) Supplementary Statement by Commissioner Freeman, pp. 20-21.

President Nixon echoed these sentiments three years later in submitting the ESAA legislation to the Congress:

> Few issues facing us as a nation are of such transcendant importance: important because of the vital role that our public schools play in the nation's life and in its future; because the welfare of our children is at stake; because our national conscience is at stake; and because it presents us a test of our capacity to live together in one nation, in brotherhood and understanding.

Special Message to the Congress Proposing the Emergency School Aid Act of 1970, PUB. PAPERS 448, 452 (May 21, 1970).

8/ Brown v. Board of Education, 347 U.S. 483 (1954).

9/ 20 U.S.C. §3192(b)(Supp. III 1979).

> The educational effects of racial isolation, however, are not confined to those districts that previously operated dual systems. In most of our large cities, and in many smaller communities, housing patterns have produced racial separation in the schools which in turn has had an adverse effect on the education of the children. It is in the national interest that where such isolation exists, even though it is not of a kind that violates the law, we should do our best to assist local school districts attempting to overcome its effects. 10/

The school desegregation effort brought with it a number of special problems and it is these "problems which arise from racial separation, whether deliberate or not, and whether past or present" 11/ that the Emergency School Aid Act addresses. By providing funds for special instructional services, community activities, human relations efforts and staff development, the Act has had a positive effect on the process of school desegregation in various parts of the nation. 12/ According to the House Committee on Education and Labor, "witness after witness" during Committee hearings testified that one of the major achievements of the program was the reduction of racial tensions associated with school desegregation. 13/ The Committee found that "an evaluation of the ESAA magnet schools by ABT Associates concluded that in every site visited, people felt these schools had a positive effect on community [racial] attitudes." 14/ One Georgia superintendent testified that over 38,000 cases were handled by his district's ESAA-funded community aides in one school year." 15/

10/ Special Message to the Congress Proposing the Emergency School Aid Act of 1970, PUB. PAPERS 448, 449 (May 21, 1970).

11/ Ibid., at 449.

12/ H.R. REP. NO. 95-1137, 95th Cong., 2d Sess. 92-93, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 4971, 5062-63.

13/ Id., at 93, [1978] U.S. CODE CONG. & AD. NEWS at 5063.

14/ Id.

15/ Id.

In addition to easing racial tension, the Emergency School Aid Act funds "programs designed to overcome the educational disadvantages that stem from racial isolation." 16/ As the Supreme Court noted in Brown v. Board of Education, separate educational facilities are inherently unequal. 17/ This Commission has found, moreover, that there are specific educational disadvantages associated with racially isolated schools, including lower levels of academic achievement linked to overcrowding, poor school facilities and low self-esteem on the part of minority students who perceive that their schools are considered inferior by the community at large. 18/ ESAA projects address all these deficiencies.

Education has traditionally been viewed in America as a "passport from poverty," and education accordingly was a major facet of the national effort to eliminate poverty. 19/ In remarking upon the enactment of the Elementary and Secondary Education Act of 1965, President Johnson called it "the giant stride toward full educational opportunity for all of our school children....It will help five million children of poor families overcome their greatest barrier to progress--poverty." 20/

ESAA projects were funded at $248.5 million dollars in 1980 and $236.3 million under a continuing resolution for 1981. 21/ The administration has proposed rescinding $59.3 million of the 1981 funds, which would reduce the program by 25 percent 22/ and cut the number of grants awarded by the basic grant

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16/ Special Message to the Congress Proposing the Emergency School Aid Act of 1970, PUB. PAPERS 448 (May 21, 1970).

17/ Brown v. Board of Education, 347 U.S. 483, 495 (1954).

18/ U.S., Commission on Civil Rights, Racial Isolation in the Public Schools, (1967), pp. 92-93, 114.

19/ Julie R. Jeffrey, Education for Children of the Poor (Columbus: Ohio State University Press, 1978), p. xi.

20/ Remarks Following Enactment of the Elementary and Secondary Education Bill, PUB. PAPERS 407 (Apr. 9, 1965).

21/ U.S., Department of Education, Revised Fiscal Year 1982 Budget (March 10, 1981), Attachment D, p. 25 (hereafter cited as Revised Fiscal Year 1982 Budget).

22/ Ibid.

component an estimated 42 percent, from 350 to 200. 23/ Further, the number of grants for magnet schools and nonprofit organizations would be reduced by approximately 25 percent, as would ESAA's educational radio and television component, which provides for the development of television and radio programs that have positive cognitive and effective values and present multi-ethnic children's activities. The proposal would eliminate new radio programming, reduce support for tape duplication, and cut the number of shows in each new television series from 13 to 9. 24/ Another effect of the proposed budget cuts would be reduced awards to school districts with older desegregation plans. 25/ Many of these districts use ESAA funds to address second generation school desegregation problems, such as minorities' disproportionate suspension and expulsion rates, overrepresentation in special education classes, and underrepresentation in extracurricular activities.

For FY 1982, the administration has recommended that ESAA be included in the consolidation of approximately 50 individual education programs into block grants. 26/ Under the block grant approach proposed by the administration, states would be free to allocate block grant funds among any of the programs included in the block grant. At the same time, States could choose to drastically reduce or completely eliminate funding for programs, such as ESAA, included in the block grant.

23/ Democratic Study Group, Special Report: The Reagan Education Budget, No. 97-18, April 13, 1981, p. 13.

24/ Ibid., p. 14.

25/ Ibid., p. 13.

26/ Revised Fiscal Year 1982 Budget, pp. 2-3. For additional discussion of block grants see Chapter 5.

The Bilingual Education Act

Since its enactment in 1969, the Bilingual Education Act has funded programs designed to meet the special educational needs of children with limited ability to speak English. 1/ The bilingual education program, which was funded at $167 million in 1980, 2/ provides money for demonstration projects, teacher training, research evaluation, and information dissemination. 3/ Last year, the program supported 599 classroom projects serving 323,124 children, 4/ 75 percent of whom were Spanish-speaking, 5/ and provided training for an estimated 35,000 administrators, teachers, counselors, and aides. 6/

In 1967, when Senator Ralph W. Yarborough (D--Tex.) introduced the bilingual education legislation, he described language barriers as the "cruelest" kind of discrimination Mexican Americans face:

> The time has come when we must do something about the poor schooling, low health standards, job discrimination, and the many other artificial barriers that stand in the way of the advancement of Mexican-American

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1/ Bilingual Education Act, Pub. L. No. 89-10 as amended by Pub. L. No. 90-247, Jan. 2, 1968, 81 Stat. 816 and reenacted by Pub. L. No. 93-380, Aug 21, 1974, 88 Stat. 503 as amended Pub. L. No. 95-561, Nov. 1, 1978, 92 Stat. 2258 (codified at 20 U.S.C. §§3221-3261 (Supp. 1979)).

2/ Louis Serpa, Office of Policy Coordination Services, Office of Bilingual Education and Minority Language Affairs, Department of Education, Interview in Washington, D.C., April 21, 1981 (hereafter cited as Serpa Interview).

3/ U.S. Department of Education, Justifications of Appropriation Estimates for Committees on Appropriations, Fiscal Year 1982 Revised, (hereafter cited as FY 1982 Appropriation Justifications).

4/ FY 1982 Appropriation Justifications, p. 238.

5/ Dorothy Wagner, Office of Bilingual Education and Minority Language Affairs, U.S. Department of Education, Telephone interview, Apr. 27, 1981.

6/ Executive Office of the President, Office of Management and Budget, 1980 Catalog of Federal Domestic Assistance (Washington, D.C.: Government Printing Office, 1980).

> people along the road to economic equality. The most promising area for progress is in the field of education. Here Mexican-Americans have been the victims of the cruelest form of discrimination. Little children, many of whom enter school knowing no English and speaking only Spanish are denied the use of their language...Thus the Mexican-American child is wrongly led to believe from his first day of school that there is something wrong with him, because of his language. This misbelief soon spreads to the image he has of his culture, of the history of his people themselves. This is a subtle and cruel form of discrimination, because it indelibly imprints upon the consciousness of young children an attitude which they will carry with them all the days of their lives. 7/

In 1974, the Supreme Court held that under Title VI of the Civil Rights Act of 1964 and its implementing regulations, the States have an obligation to provide equal educational opportunity for all children, including the responsibility to take "affirmative steps to rectify the language deficiency in order to open programs to these children." 8/ As the Court noted, "[t]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education." 9/

Some of the barriers facing today's students with limited English proficiency also faced large numbers of earlier immigrants to the United States. Although a few immigrant groups attempted to establish native-language schools for their children, 10/ the great majority of language-minority children were enrolled in schools where they received no special consideration, despite their linguistic difficulties. 11/ As is true today, many schools with large immigrant enrollments

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7/ 113 CONG. REC. 599 (1967).

8/ Lau v. Nichols, 414 U.S. 563, 568 (1974).

9/ *Id.*, at 566.

10/ U.S. Commission on Civil Rights, *A Better Chance to Learn: Bilingual-Bicultural Education* (1975), p. 8.

11/ Ibid.

had higher truancy and drop-out rates, lower achievement levels, and greater instances of grade repetition than did schools with non-immigrant populations. 12/ Italian children, for example, scored well below the norm in acquisition, organization, retention, and use of knowledge. This was attributed to the language handicap of the children. 13/ The 1920 Census reported that the foreign born had the highest proportion of 15--17-year-olds out of school. 14/

In addition to the language barrier, many students presently served by the Bilingual Education Act face an additional barrier--that of race. Addressing this point, the District Court in Cisneros v. Corpus Christi Independent School District, a Texas school desegregation case, cited the testimony of an expert witness on the definition of Spanish-speaking Americans as a racial minority group:

> Looking at it culturally, they are an identifiably different group with adherence to the Spanish language, certain physical characteristics that are more or less Indian or mistisaje or the blending of the Spanish and the Mexican. So, no matter how you cut it, you are going to come out as a minority, both from social-science and from the legal point of view, and from the cultural point of view, and the racial point of view. 15/

Intertwined with the effects of discrimination based on color, national origin, and language is the barrier of poverty. As the Senate Committee on Labor and Public Welfare concluded when it reported favorably on the Bilingual Education Act:

> There is a...correlation between low family income and the inability to speak

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12/ Ibid.

13/ Ibid., at n. 20.

14/ Ibid.

15/ 324 F. Supp. 599, 607 (S.D. Texas 1970), modified (as to remedy) 467 F.2d 142 (5th Cir. 1972), cert. denied, 413 U.S. 922 (1973). See also Keyes v. School District No. 1, 413 U.S. 189, 197, (1973) in which the Court maintained that blacks and Hispanics in Denver suffer identical discrimination in treatment as compared to the treatment afforded Anglo students, and concluded that "Hispanics constitute an identifiable class for the purposes of the 14th Amendment."

> English...The solution to this problem lies in the ability of our local educational agencies with high concentrations of children of limited English speaking ability to develop and operate bilingual programs of instruction. The close relationship between conditions of poverty, low achievement and non-English speaking ability illustrates the almost impossible burden which is placed on non-English speaking children in our schools. 16/

Congress intended the Bilingual Education Act to encourage State and local educators to develop programs that would end these and other forms of discrimination against students with limited proficiency in English. The House Committee on Education and Labor reported that "children of limited English speaking ability have much lower achievement levels in the basic skills...By the time students reach the secondary level, these achievement lags accumulate to produce a staggering dropout rate." 17/ Evidence suggests that bilingual education programs are making some progress in reversing those trends. In New York, for example, students enrolled in bilingual programs are showing marked improvement in reading and math scores, as well as maintaining better attendance records and lower dropout rates and attending college in greater proportions than are students enrolled in regular school programs. 18/ Other recent studies have shown similar results. 19/

The administration's FY 1982 budget proposal for the bilingual education program is 21 percent less than the budget authority under the continuing resolution for FY 1981. 20/ This is a

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16/ S. REP. NO. 726, 90th Cong., 1st Sess. 2, reprinted in [1967] U.S. CODE CONG. & AD. NEWS 2780.

17/ H.R. REP. NO. 95-1137, 95th Cong., 2d Sess. 5, reprinted in [1978] U.S. CODE CONG. and AD. NEWS 4971, 5053, 5054.

18/ State of New York, Department of Education, Bureau of Bilingual Education, Report on the Educational Programs for Students of Limited English Proficiency in the State of New York, presented to the Regents of the University of the State of New York, October 1980, p. 15.

19/ Rudolph Troike, Research Evidence for the Effectiveness of Bilingual Education, National Clearinghouse for Bilingual Education, 1978.

20/ FY 1982 Appropriation Justifications. The budget authority for the bilingual education program was $176 million under the FY 1981 continuing resolution. The administration proposed a rescission of $46 million in FY 1981 to $130 million. For FY 1982, the administration has proposed that the bilingual education program be funded at $140 million.

reduction of $36 million, 21/ of which over $30 million would be cut from grants to local projects, lowering such funding by 32 percent, 22/ and approximately $5 million would be cut from the training budget, reducing it by over 13 percent. 23/ If enacted, these cuts would eliminate service to 127,800 children and funding for one-third of the training institutes and 36 percent of the professional development programs. 24/ The costs to children with limited English proficiency would be high. At peak last year, the bilingual education program served only 10 percent of students with limited English proficiency. 25/ The proposed cuts would reduce that number to 7 percent in 1982. 26/ Moreover, although the number of affected children will continue to increase in proportion to population growth, 27/ fewer teachers could be trained under the proposed budget. This would exacerbate the shortage, estimated at 129,000 in 1978, 28/ of qualified teachers for bilingual education programs.

21/ Serpa Interview.

22/ *Id*.

23/ Ibid.

24/ Ibid.

25/ Ibid.

26/ Ibid.

27/ According to one estimate the number of children of limited English proficiency will increase from 2,394.200 in 1980 to 2,795,900 by 1990 representing and increase of approximately 17 percent. See *Fifth Annual Report of the National Advisory Council for Bilingual Education, The Prospects for Bilingual Education in the Nation* (1980 - 1981), Table 1, p. 26.

28/ H. REP. NO. 95-1137, 95th Cong., 2d Sess. 88, [1978] U.S. CODE CONG. & AD. NEWS 5058.

Small Business Administration Programs

The Small Business Administration (SBA) was established in 1953 during the Eisenhower administration to facilitate and protect small-business interests in order "to preserve free competitive enterprise," to assure small businesses a "fair proportion" of Government sales and purchases, and to enhance the national economy. 1/ The SBA provides small businesses with direct loans, loan guarantees, management and technical assistance, and Government procurement assistance, and the agency also licenses and regulates investment companies that provide equity and venture capital assistance to small businesses. 2/ In FY 1980, SBA spent approximately $3.6 billion for business loans and another $2.9 billion for non-business and other development assistance programs. 3/ Of these expenditures, over $368 million were earmarked for programs designed to help minority-owned firms overcome the vestiges of past discrimination and develop competitive viability. 4/ For example, minority-owned small businesses received 69 percent of the economic opportunity loan funds and 16 percent of the surety bond guarantee program funds made available by the SBA. 5/

Historically, blacks and other minorities "have been discouraged from entering business by the absence of a historical experience and the general scarcity of business opportunities." 6/ This history, coupled with current discriminatory practices, puts today's minority entrepreneurs in distinctly disadvantaged positions. Minority enterprises tend to lack the collateral and equity necessary for capital formation and business stability. 7/ They face discriminatory

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1/ 15 U.S.C. §633 (Supp. III 1979).

2/ STAFF OF HOUSE COMM. ON SMALL BUSINESS, 97th CONG., 1st SESS., SUMMARY OF SBA PROGRAMS 1 (Comm. Print 1981).

3/ Harry Carver, Comptroller, Small Business Administration, interview in Washington, D.C., April 16, 1981.

4/ Arnold Rosenthal, Office of Budget, Small Business Administration, telephone interview, April 17, 1981.

5/ Ibid.

6/ Samuel I. Doctors and Anne Sigismund Huff, Minority Enterprise and the President's Council (Cambridge, Mass.: Ballinger Pub. Co., 1973), p. 4.

7/ Ibid.

practices, such as "redlining," when seeking credit and insurance. The lack of opportunities in white-owned businesses has drastically reduced the numbers of minorities with sufficient managerial experience to make it on their own, and have deprived minority communities of minority businessmen and women as role models. Even when they are able to overcome these and other obstacles to business growth and success, minority-owned businesses tend to be very small. As a result, they encounter difficulties obtaining government contracts, which generally require performance on a large scale. 8/

Several SBA programs were intended to address the many ways in which racial discrimination remains an impediment to minority participation in the small business arena. As recently as 1978, Congress made the following findings while revamping an

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8/ The Supreme Court, in a recent decision upholding a 10 percent set-aside program for the provision of contracting opportunities to minority-owned businesses under the Public Works Employment Act of 1977, Pub. L. No. 95-28, 91 Stat. 116, noted that:

> With respect to the MBE provision, Congress had abundant evidence from which it could conclude that minority businesses have been denied effective participation in public contracting opportunities by procurement practices that perpetuated the effects of prior discrimination....Congress had before it, among other data, evidence of a long history of marked disparity in the percentage of public contracts awarded to minority business enterprises. This disparity was considered to result not from any lack of capable and qualified minority businesses, but from the existence and maintenance of barriers to competitive access which had their roots in racial and ethnic discrimination, and which continue today, even absent any intentional discrimination or other unlawful conduct.

Fullilove v. Klutznick, ___ U.S. ___, 100 S. Ct. 2758, 2774 (1980).

SBA program:

-- that the opportunity for full participation in our free enterprise system by socially 9/ and economically disadvantaged 10/ persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

-- that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

-- that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities; 11/

-- that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups; [and]

-- that such conditions can be improved by providing the maximum practicable opportunity for the development of

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9/ "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities." 15 U.S.C. §637(a)(5)(Supp. III 1979).

10/ "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged." 15 U.S.C. §637(a)(6) (Supp. III 1979).

11/ Congress later amended this finding, specifically identifying Asian Pacific Americans as a socially and economically disadvantaged group. Pub. L. No. 96-302, §118, 94 Stat. 833, 840 (1980).

> small business concerns owned by members of socially and economically disadvantaged groups... 12/

One of the primary goals of the Small Business Act 13/ and the Small Business Investment Act 14/ is to stimulate the ownership and competitive viability of minority-owned small businesses and their contribution to the economic growth and well-being of the national economy. Recognizing that the twin forces of discrimination and poverty have erected almost impenetrable barriers to minority participation in the economic mainstream of the United States, President Nixon in 1971 supported targeting minorities for special SBA assistance:

> The best way to fight poverty and to break the vicious cycle of dependence and despair which afflicts too many Americans is by fostering conditions which encourage those who have been so afflicted to play a more self-reliant and independent economic role.
>
> This goal will not be achieved overnight for there is no easy way to eliminate the barriers which now prevent many who are members of minority groups from controlling their fair share of American business. Yet the long range health of our economy--and, indeed, of our entire society--requires us to remove these barriers as quickly as possible. Both morally and economically, we will not realize the full potential of our Nation until neither race nor nationality is

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12/ Pub. L. No. 95-507, 92 Stat. 1757 (1978)(codified at 15 U.S.C. §§631(e)(1)(A)-(E) (Supp. III 1979)). Based on these findings, the Congress retargeted the section 8(a) program to foster business ownership by socially and economically disadvantaged persons, to promote their competitive viability by providing contract, financial, technical, and management assistance, and to assist such firms in the procurement of Federal contracts or subcontracts. 15 U.S.C. §§631(e)(2)(A)-(C) (Supp. III 1979).

13/ 15 U.S.C. §§631-647 (1976 & Supp. III 1979), as amended by Pub. L. No. 96-302, 94 Stat. 833 (1980), and by Pub. L. No. 96-481, 94 Stat. 2321 (1980).

14/ 15 U.S.C. §§661-696 (1976 & Supp. III 1979), as amended by Pub. L. No. 96-302, 94 Stat. 833 (1980).

> any longer an obstacle to full participation in the American marketplace. 15/

Throughout the legislative history of acts establishing SBA programs to assist minority-owned businesses, the discrimination that has prevented persons of color from full participation in the economic mainstream is a consistent theme. For example, when Representative William Moorhead (D, Pa.) introduced legislation to create the surety bond guarantee program, he stated:

> [R]acial prejudice...is an element that exists beneath what surety companies and banks believe are very legitimate reasons for not granting these [minority] individuals performance bonds and loans.
>
> ...I do ask that we wipe away, through regulation, the hodge-podge of tradition, prejudice, and redtape which keeps saying that "only a white man can handle the complex problems encountered in the construction industry." 16/

By providing minority small businesspersons with access to investment capital and assistance, the SBA plays a significant role in combating the current effects of past discrimination that prevent minorities from effectively competing in the marketplace. In addition to providing services that potentially benefit all small businesses, the SBA administers three programs substantially or exclusively for minority firms or individuals. The Section 7(j) management and technical assistance program 17/ helps compensate minorities for their historical lack of opportunity to acquire business expertise. Through the Section 8(a) procurement program, 18/ the SBA helps minority-owned businesses obtain Federal contracts or subcontracts, acting at times as general contractor and subcontracting work to small businesses, thus allowing small minority firms to compete

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15/ Special Message to the Congress Urging Expansion of the Minority Business Program, PUB. PAPERS 1041, 1045-46 (October 13, 1971).

16/ 115 CONG. REC. 22096 (1969).

17/ 15 U.S.C. §636(j)(1976 & Supp. III 1979).

18/ 15 U.S.C. §637(1976 & Supp. III 1979).

effectively for Government contracts. Under the Minority Enterprise Small Business Investment Company (MESBIC) program, 19/ the SBA licenses MESBICS to render financial and management assistance to members of minority groups and others "whose participation in the free enterprise system is hampered because of social or economic disadvantages." 20/ President Nixon noted the importance of this small business program:

> Not only will the MESBIC legislation expand available capital to give minority businessmen a greater "piece of the action," but it will in turn stimulate the employment of minority individuals and provide inroads into the unacceptably high unemployment rate for minorities. 21/

19/ The MESBIC program was originally established by the Small Business Administration under the general authority conferred on the agency by the Small Business Investment Act of 1958, as amended. Pub. L. No. 85-699, §301, 72 Stat. 689 (1958), as amended by Pub. L. No. 86-502, §4, 74 Stat. 196 (1960), by Pub. L. No. 87-341, §§11(a)-(b), 75 Stat. 756 (1961), and by Pub. L. No. 90-104, Title II, §202, 81 Stat. 269 (1967) (current version at 15 U.S.C. §681 (1976 & Supp. III 1979)).

20/ 15 U.S.C. §681(d) (1976 & Supp. III 1979). Although the legislation was broadened to include other individuals who were not members of minority groups in order "to bring its benefits to as many worthy individuals as possible...who are hampered in achieving full economic citizenship in our economic system by virtue of their social or economic disadvantages," H. REP. NO. 92-1428, 92d Cong., 2d Sess., reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4929, 4930, it is clear that Congress endorsed the MESBIC program and its assistance to minorities. As the House Committee on Banking and Currency noted:

> In the years since 1969,...the Small Business Administration under [its] general authority...has licensed a special class of small business investment companies (SBICs) known as minority enterprise small business investment companies (MESBICs)....
>
> [W]e believe the goal to be a worthy one.

Id. at 4930.

21/ Letters to [Wright Patman,] the Chairman...of the House Committee on Banking and Currency About Proposed Minority Enterprise Small Business Investment Legislation, PUB. PAPERS 554, 555 (April 27, 1972).

The administration's proposed FY 1981 budget rescissions and its FY 1982 budget calls for severe cuts in a number of SBA programs that assist minority-owned small businesses. 22/ The 30 percent cut in funds available for the economic opportunity loan program 23/ would significantly impede capital formation for minority-owned firms. A reduction in the surety bond guarantee program, which is targeted for a 25 percent cut, 24/ would make it even more difficult for minority concerns to obtain surety bonds, which are essential to successful contract bidding. The 17 percent cut proposed for the Section 7(j) management and technical assistance programs 25/ would deny minority firms the opportunity to acquire the needed expertise for developing successful businesses. The administration's proposal to cut the Section 8(a) program by 17 percent 26/ would limit Federal contracting and subcontracting opportunities for minority-owned firms. In addition, the 11 percent cut proposed for the Minority Enterprise Small Business Investment Company (MESBIC) program 27/ would limit minority access to capital.

22/ These percentages are based on figures provided by SBA officials. Robert Dietsch, Office of Public Relations, Small Business Administration, interview in Washington, D.C., April 14, 1981 (hereafter cited as Dietsch Interview).

23/ The administration proposes a 13% rescission in FY 1981 funding and a further 19% reduction from that funding level in FY 1982. These two budget reductions for the economic opportunity loan program represent a 30% reduction of the FY 1981 budget prior to the proposed rescission. Dietsch Interview.

24/ The administration proposes a 13% rescission in FY 1981 funding and a further reduction of 14% from that funding level in FY 1982. Taken together, these budget reductions represent a 25% reduction of the FY 1981 budget prior to the proposed rescission. Dietsch Interview.

25/ Although the administration recommends no budget reduction for 7(j) management and technical assistance programs in FY 1982, it has proposed a 17% rescission for FY 1981. Dietsch Interview.

26/ Similar to the action taken with respect to the 7(j) program, the administration proposes a 17% rescission in FY 1981 and maintaining the funding of the 8(a) procurement program at that reduced level in FY 1982. Dietsch Interview.

27/ The administration proposes an 18% rescission in FY 1981 and a 9% increase from that reduced level in FY 1982. Taken together, these budgetary decisions represent an 11% reduction from the FY 1981 budget prior to the proposed rescission. Dietsch Interview.

Economic Development Administration

The Economic Development Administration (EDA) in the U.S. Department of Commerce is responsible for administering the Public Works and Economic Development Act of 1965. 1/ The Act authorizes EDA to provide various forms of aid to States, area and regional planning and development districts, localities, and Indian tribes in order to reduce substantial and persistent unemployment and underemployment in economically distressed areas and regions and to meet problems of economic dislocation. 2/ EDA assistance takes the form of grants, loans, and loan guarantees to support economic development projects that encourage job-producing industrial and commercial businesses to locate or expand operations in distressed areas. 3/ As recently as 1978, Congress found such a regional development program to be an essential part of any policy to promote full

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1/ 42 U.S.C.A. §§3121-3246h (1977 and Supp. 1980). EDA also administers trade adjustment assistance programs under the Trade Act of 1974. 19 U.S.C. §§2101-2487 (1976 and Supp. III 1979).

2/ H.R. REP. NO. 539, 89th Cong., 1st Sess., *reprinted in* [1965] U.S. CODE CONG. & AD. NEWS, 2788, 2789. The Act as originally passed only addressed the first of these purposes. A 1974 amendment added a program designed to meet problems of sudden and severe economic dislocation. S. REP. NO. 93-1055, 93rd Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 5377, 5386.

3/ Specifically, EDA is authorized to provide public works development grants to build or improve community facilities that would attract job-producing industrial and commercial enterprises, low-interest loans or loan guarantees to businesses locating or expanding in economically distressed areas, technical assistance grants to further the objectives of development activities, planning grants to support local development organizations, and special adjustment grants to areas experiencing sudden and severe economic dislocation. 42 U.S.C.A. §§3121-3246h (1977 and Supp. 1980). The last of these programs was added by the 1974 amendments. Public Works and Economic Development Act, Pub. L. No. 93-423, 88 Stat. 1158, 1164 (1974).

employment and eliminate racial and ethnic discrimination. 4/ In FY 1980, EDA expended $546.6 million on public works, technical assistance, economic adjustment and planning grants, direct loans, and guarantee payments on defaulted loans. 5/ In addition, it made new loan guarantee commitments of $27.9 million for a total aid program of nearly $575 million. 6/

One of the purposes of the Public Works and Economic Development Act is to "further the objectives of the Economic Opportunity Act of 1964," 7/ the foundation of the Federal effort to eliminate poverty. 8/ With this legislation, President Johnson sought to break the "web of circumstances which block progress and lead to further decline" in economically distressed areas. 9/ This was to be accomplished by providing the public structures needed to attract new business, thus creating new jobs and raising incomes to support the schools, hospitals, and other public facilities that would further stimulate economic growth and prepare people to

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4/ In enacting the Full Employment and Balanced Growth Act of 1978, the Congress stated that any effective policy to promote full employment must include programs designed to reduce unemployment within regional areas and among particular labor force groups. It also maintained that increasing job opportunities and full employment would greatly contribute to the elimination of racial and ethnic discrimination. 15 U.S.C. §3101 (Supp. III 1979).

5/ Office of Management and Budget, Budget of the United States Government--Appendix, Fiscal Year 1982, p. I-F12 (hereafter cited as FY 1982 Budget Appendix).

6/ Ibid.

7/ 42 U.S.C. §3131 (1976).

8/ Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty, PUB. PAPERS, 375, 379 (March 16, 1964).

9/ Special Message to the Congress on Area and Regional Economic Development, 1965 PUB. PAPERS, 320, 311 (March 25, 1965).

take advantage of increased employment opportunities. 10/ The President saw the Act as an integral part of several activities undertaken during his administration to combat poverty and overcome the consequences of racial discrimination. Prior to submitting his proposed bill, he sent a special message about area and regional economic development to the Congress, noting:

> A wide array of programs and weapons has been called into action to make sure no American is denied opportunity because of his race, or lack of education, or the poverty of his birth.
>
> As our people more fully realize their human potential, we must be sure that the economic potential in all areas and regions is also realized. Indeed, in order to be fully effective, education programs, health programs, the programs of the war on poverty, and many other activities require complementary efforts to promote sound economic conditions and the proper physical environment.
>
> Opportunity should not be closed to any person because of the circumstances of the area in which he lives. 11/

These words were echoed by Senator Walter Mondale (D--Minn.) during congressional floor debate on the bill:

> The greatest promise of America has always been the unqualified assurance of equal opportunity for all people regardless of their background or circumstances....Today in America there is a wide range of programs and projects to guarantee that no one is denied this chance because of race....

10/ Ibid., at 321-322. The intertwining role of the war on poverty and the proposed regional and area economic development program in serving this purpose was stressed. "The anti-poverty program will help people improve their ability to obtain and hold a job. This [economic development] program is designed to increase the number of jobs available to those who want to work." Ibid., at 327.

11/ Ibid., at 321.

> But today opportunity is closed to many of our fellow Americans because of the economic decline of the area in which they live. 12/

Several members of Congress also specifically endorsed provisions of the Act designating Indian areas as potential recipients of economic development aid. 13/

Under the administration's proposed FY 1982 budget, EDA aid programs will be completely eliminated. 14/ The administration has already begun the process of dismantling EDA by proposing to rescind all but $338 million of the $942.2 million contained in the FY 1981 budget. 15/

12/ 111 CONG. REC. 12168 (1965).

13/ 111 CONG. REC. 12154 (remarks of Sen. Montoya); 111 CONG. REC. 12168 (remarks of Sen. Mondale); 111 CONG. REC. 19970 (remarks of Rep. Redlin and Rep. Edmondson). Although special adjustment grants for sudden and severe economic dislocation were not parts of the original legislation and, thus, not part of the purposes stated here, employment opportunities for minorities are significantly affected by plant relocation and site selection decisions made by federal agencies and private enterprises. Public Works and Economic Development Act, Pub. L. No. 89-136, as added Pub. L. No. 93-423, 1974, 88 Stat. 1169, and amended Pub. L. No. 94-487, 1976, 90 Stat. 2336 (codified at 42 U.S.C. §§3241, 3243, and 3245 (1976 and Supp. 1979). See U.S., Commission on Civil Rights, Equal Opportunity in Suburbia, (July 1974), pp. 11-13 and 46-49.

14/ Oversight responsibility for any outstanding EDA loans, guarantees or other assistance would continue to be carried out in FY 1982 by a holdover staff, but no new loan, grant, or guarantee commitments would be made. U.S. Department of Commerce, The Commerce Budget in Brief, Fiscal Year 1982, Revised, March, 1981, p. 27 (hereafter cited as FY 1982 Commerce Budget in Brief).

15/ Lorin L. Goodrich, Director, Office of Management and Administration, Economic Development Administration, telephone interview in Washington, D.C., April 24, 1981 (hereafter cited as Goodrich interview); Proposed Rescission of Budget Authority No. R81-49, transmitted to the Congress on March 17, 1981, published in 46 Fed. Reg. 18198 (March 23, 1981); FY 1982 Commerce Budget in Brief, p. 28; and FY 1982 Budget Appendix, p. I-F12. These figures include new loan guarantee and direct aid authority. They do not include $107,030,000 in FY 1981 trade adjustment assistance which would continue to be provided by EDA under the Trade Act of 1974. In fiscal year 1982, this program is proposed to be shifted to the International Trade Administration, U.S. Department of Commerce, with a sustained appropriation level of $107,030,000. Goodrich interview and FY 1982 Commerce Budget in Brief.

The proposed budget cuts and rescissions would have a substantial effect on minorities by eliminating incentives for minority participation in EDA programs. EDA regulations require that planning boards have minority representation 16/ and that applicants and certain other potential program beneficiaries meet specific civil rights requirements before project approval and remain in compliance once a project is underway. 17/ Moreover, the proposed cuts would affect a special EDA initiative, begun in FY 1979, to direct a stated percentage of assistance dollars to minority-owned firms and communities with large concentrations of minorities. 18/ In FY 1980, the goal was 20 to 25 percent. 19/ One EDA official estimates that the cuts would mean a loss of $125 million in FY 1981 and $200 million in FY 1982 for grants, loans, and loan guarantees benefiting minority communities and businesses. 20/ These totals, however, do not adequately depict the economic loss to individual localities and firms. In FY 1980, EDA provided an $800,000 grant to Operation Second Chance, Inc. in San Bernardino, California, to help enlarge a technical-vocational school in a predominantly minority community experiencing high unemployment. 21/ A $400,000 grant was used to expand a revolving loan fund and create a surety-bond

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16/ See U.S., Dept. of Commerce, Economic Development Administration, Civil Rights Guidelines, April 1979, Appendix D. (hereafter Civil Rights Guidelines); 13 C.F.R. §311.4 (1980).

17/ 13 C.F.R. §311 (1980); 15 C.F.R. §8 (1980); Civil Rights Guidelines.

18/ U.S. Department of Commerce, Economic Development Administration 1979 Annual Report, p. 26 (hereafter cited as EDA 1979 Report).

19/ U.S. Department of Commerce, Economic Development Administration 1980 Annual Report, p. 20 (hereafter cited as EDA 1980 Report). In 1979, although the goal was 9.1 to 9.6 percent, 13 percent of program funds went to minority communities and businesses. EDA 1979 Report, p. 26.

20/ Beverly Milkman, Director, Office of Technical Assistance, Economic Development Administration, telephone interview in Washington, D.C., April 17, 1981. Ms. Milkman characterized the estimates as "conservative."

21/ EDA 1980 Report, p. 20.

guarantee program for minority contractors in Dade County, Florida. 22/ Loans totaling $202,000 went to Alabama Consolidated Foods, Inc. of Tuskegee, Alabama, a minority-owned business, to help establish a food supply service. 23/ These are but a few examples of the types of programs that would no longer enjoy EDA assistance under the proposed budget.

22/ Ibid.

23/ Ibid.

Federally Assisted Housing Programs

There are two principal programs of housing assistance for low- and moderate-income persons: the conventional low rent public housing program 1/ and the Section 8 housing assistance payments program. 2/ These programs, which are administered by the Department of Housing and Urban Development, provide Federal subsidies to enable families of limited means to obtain standard housing without paying excessive portions of their incomes for rent. 3/ Federally assisted housing programs are particularly beneficial to minority families, whose access to standard housing in the private sector is constrained by market discrimination as well as disproportionately lower incomes.

In 1979, the public housing program provided housing to 3,400,000 residents, 4/ 61.8 percent of whom were minorities. 5/ As of September 30, 1979, the Section 8 program was providing an additional 752,834 units. 6/

1/ 42 U.S.C. §§1437-1437k (1976 & Supp. III 1979). The public housing program was established under the Housing Act of 1937. Cn. 896, 50 Stat. 888 (1937). Congress expanded the public housing program in 1949 and declared as national policy "the goal of a decent home and a suitable living environment for every American family." Ch. 338, §2, 63 Stat. 413 (1949).

2/ 42 U.S.C. §1437f (1976 & Supp. III 1979).

3/ Rental payments have been limited by statute to 25 percent or less of family income in the case of very low income families. 42 U.S.C. §§1437a, 1437f(c)(3) (Supp. III 1979).

4/ U.S., Department of Housing and Urban Development, *1979 Annual Report*, (June 1980), p. 3. The figures cited include 1.5 million elderly and handicapped persons. HUD states that the public housing program has provided housing for over 14.8 million persons since its inception in 1937. Ibid.

5/ U.S., Department of Housing and Urban Development, *1979 Statistical Yearbook* (November 1980), p. 206.

6/ Ibid., p. 214. Total occupancy figures by race for the Section 8 program were not available from HUD.

Historically, the American housing marketplace has denied minority home seekers access to standard housing in nonsegregated locations. Laws in many local communities required residential segregation, precluding blacks and other groups from living in specified neighborhoods. Restrictive covenants on deeds forbade the sale or transfer of properties to minorities. Even after the Supreme Court of the United States outlawed this type of discrimination, 7/ residential segregation continued to grow due to private discrimination by individuals and real estate and banking institutions, 8/ and to Federal policies and programs that reinforced and maintained patterns of segregation. 9/ In addition, disparities in the purchasing power of minorities due to their disadvantaged economic status continued to limit access to standard housing.

During the past 20 years, the intent of Federal policy and legislation has been to counter the harmful effects of past housing discrimination. In 1962, President John F. Kennedy issued an executive order forbidding the continuation of discrimination in Federal housing assistance programs and declaring that such discrimination denied minorities the

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7/ Shelley v. Kraemer, 334 U.S. 1 (1948).

8/ Examples of past and present discriminatory housing practices affecting current minority ability to obtain housing include discriminatory appraisals, insurance and mortgage redlining and discrimination, and sales and rental discrimination in the availability, contract terms and conditions offered minority homeseekers. All of these elements undercut equity accumulation for minority families and the development and maintenance of standard housing in minority neighborhoods. *See, e.g.*, Richard P. Fishman, ed., *Housing for All Under Law* (a report of the American Bar Association Advisory Commission on Housing and Urban Growth) (Cambridge, Mass.: Ballinger, 1978); *see also*: U.S., Commission on Civil Rights, *Twenty Years After Brown: Equal Opportunity in Housing* (1975).

9/ President Nixon, in a 1971 statement on equal housing opportunity, cited the Federal Government's acquiescence in discriminatory practices which "contribut[ed] to housing shortages and to the impairment of equal housing opportunity for minority Americans." Statement About Federal Policies Relative to Equal Housing Opportunity, PUB. PAPERS 721, 723 (June 11, 1971).

improved housing that Congress had mandated. 10/ In 1966, President Lyndon B. Johnson linked civil rights progress to the Government's housing assistance efforts, saying that "[f]reedom from discrimination is not enough. There must be freedom from the disadvantage that 200 years of discrimination helped create." 11/ One of the manifestations of past discrimination President Johnson cited was the desperate need for decent low and middle-income housing to counter conditions in "[t]he ghettos of our major cities--North and South, from coast to coast--[that] represent fully as severe a denial of freedom and the fruits of American citizenship as more obvious injustices." 12/

The Housing and Urban Development Act of 1968 13/ established a landmark national 10-year housing production goal of 26 million new units of housing, including 6 million new units of low- and moderate-income housing assistance. 14/ In addition, the Civil Rights Act of 1968 15/ outlawed private acts of housing discrimination and required the Department of Housing and Urban Development to administer its programs "affirmatively" to achieve fair housing in the United States. 16/

During the 1970s, a series of cases in the Federal courts raised civil rights questions about HUD's administration of Federal housing programs, particularly its approvals of sites

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10/ Exec. Order No. 11,063, 3 C.F.R. 652 (1959-1963 Compilation).

11/ Special Message to Congress Proposing Further Legislation To Strengthen Civil Rights, PUB. PAPERS 461, 466 (April 28, 1966).

12/ Ibid., p. 468.

13/ Pub. L. No. 90-448, 82 Stat. 476 (1968).

14/ 42 U.S.C. §§1441a(a) (1976).

15/ Pub. L. No. 90-284, tit. VIII, 82 Stat. 81 (1968).

16/ Id. §808(e)(5).

chosen locally for assisted housing development. 17/ In a case affirming HUD's duty to combat discrimination, the Third Circuit stressed the relationship between congressional initiatives to provide improved housing and the passage of applicable civil rights law:

> Read together the Housing Act of 1949 and the Civil Rights Acts of 1964 and 1968 show a progression in the thinking of Congress as to what factors significantly contributed to urban blight and what steps must be taken to reverse the trend....In 1949 the Secretary...possibly could act neutrally on the issue of racial segregation. By 1964 he was directed...to look at the effects of local planning action and to prevent discrimination in housing resulting from such action. By 1968 the Secretary had to affirmatively promote fair housing. 18/

President Richard M. Nixon, in his 1971 housing statement wrote that the achievement of equal housing opportunity would require high production levels of federally assisted housing constructed on sites that would not "exacerbate the social and...racial isolation of our people from each other." 19/ President Nixon added that he "interpret[ed] the 'affirmative action' mandate of the 1968 [Fair Housing] act to mean that the administrator of a housing program should include, among the various criteria by which applications for assistance are judged, the extent to which a proposed project, or the overall

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17/ See, e.g., South East Chicago Comm'n v. HUD, 343 F. Supp. 62 (N.D. Ill. 1972); Crow v. Brown, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd 457 F. 2d 788 (5th Cir. 1972); Blackshear Residents Org. v. Hous. Auth. of Austin, 347 F. Supp. 1138 (W.D. Tex. 1972); Gautreaux v. Chicago Hous. Auth., 436 F.2d 306 (7th Cir. 1970), cert. denied, 402 U.S. 922 (1971); Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971); Hills v. Gautreaux, 503 F. 2d 930 (7th Cir. 1974), aff'd 425 U.S. 284 (1976); Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969); North Avondale Neighborhood Ass'n v. Cincinnati Metro. Hous. Auth., 464 F.2d 486 (6th Cir. 1972); Croskey Street Concerned Citizens v. Romney, 459 F.2d 109 (3rd Cir. 1972); Otero v. New York City Hous. Auth., 484 F.2d 1122 (2d Cir. 1973).

18/ Shannon v. HUD, 436 F.2d 809, 816 (3d Cir. 1970).

19/ Statement About Federal Policies Relative to Equal Housing Opportunity, PUB. PAPERS 721, 731 (June 11, 1971).

development plan of which it is a part, will in fact open up new, nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination." 20/ In 1972, HUD adopted Project Selection Criteria 21/ which implemented President Nixon's objectives for federally assisted housing development site selection.

Two years later, Congress passed the Housing and Community Development Act of 1974, 22/ extending the reasoning of the HUD Project Selection Criteria to the new community development grant block program created under the Act. The 1974 Act established as a statutory objective "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income." 23/ The 1974 Act required applicant jurisdictions to prepare local housing assistance plans (HAPs) with the objective of "promoting greater choice of housing opportunities [for lower income persons] and avoiding undue concentrations of assisted persons in areas containing a high proportion of low income persons." 24/ HUD regulations implementing the HAP requirement direct community development program applicants specifically to assess the local housing needs of minority families 25/ and indicate that the local housing assistance plan "should facilitate the reduction of the isolation of income groups within communities and geographic areas, affirmatively further fair housing and promote the diversity and vitality of neighborhoods." 26/

20/ Ibid., p. 731.

21/ 24 C.F.R. §§200.700-.710 (1980).

22/ Pub. L. No. 93-383, 88 Stat. 633 (1974).

23/ Id. §101(c)(6), 88 Stat. 634-35, codified at 42 U.S.C. §5301(c)(6) (Supp. III 1979).

24/ Id. §104(a)(4)(C)(ii), 88 Stat. 638, codified at 42 U.S.C. §5304(a)(4)(C)(ii) (Supp. III 1979).

25/ 24 C.F.R. §570.306 (b)(2) (1980).

26/ Id., at §507.306(a)(2).

The 1974 Act created the Section 8 rental assistance payment program, which subsequently became the principal vehicle for providing Federal housing assistance to low- and moderate-income persons. 27/

The 1974 Housing and Community Development Act represented congressional joinder of civil rights and housing objectives established under the Housing Act of 1937, the Housing Act of 1949, the Housing and Urban Development Act of 1968 and the Civil Rights Acts of 1964 and 1968 and President Kennedy's Executive Order 11,063. The 1974 Act's Section 8 rental assistance program (with the HAP requirement) emerged as a mechanism of major long-term potential for increasing housing opportunities for minorities and reducing segregation and other effects of housing discrimination.

The required housing assistance plans, for example, have led localities with few or no minority households to initiate detailed housing planning for families "expected to reside" over time in these jurisdictions. In practical terms, this has been the first time many localities have officially recognized that they have any legal responsibility for the shelter needs of minority households.

For FY 1981 the estimated budget authority under the continuing resolution was $30.9 billion for the public housing and Section 8 programs to cover the cost of 254,550 new units of housing assistance. 28/ The current administration has proposed trimming this amount by $11.1 billion, 29/ or almost 36 percent, a reduction greater than that proposed for any other Federal program. This reduction would eliminate funding for at least 85,000 housing assistance units, including 4000 units of Indian housing. New construction would be reduced by increasing the use of previously existing housing in rental assistance programs. 30/ In addition, the current 25 percent

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27/ Pub. L. No. 93-383, §201(a), 88 Stat. 662 (1974)(added as "Section 8" of the Housing Act of 1937, ch. 896, 50 Stat. 888), current version codified at 42 U.S.C. §1437f (1976 & Supp. III 1979)).

28/ U.S., Department of Housing and Urban Development, FY 1982 Budget Summary (January 1981), p. H 1-2.

29/ U.S., Department of Housing and Urban Development, Revised FY 1982 Budget Summary (March 1981), p. H 1 (hereafter cited as Revised HUD Budget).

30/ Revised HUD Budget, p. H 5.

maximum income contribution by eligible recipients of Section 8 housing assistance payments would be incrementally increased, at the rate of 1 percent a year, until it reaches a new ceiling of 30 percent of family income. 31/

The proposed budget revisions would undercut the desegregation capacity of the Federal housing assistance programs by substantially reducing the number of available units of assisted housing during FY 1982 that would be subject to housing assistance plan requirements. Moreover, increasing the proportion of existing housing units in the Section 8 program would cut the number of units of new construction that potentially would be built in locations that would offset earlier years of segregated public housing development.

The Federal housing assistance programs, supported by Presidents and legislators of both political parties, offer remedial means to counter minority housing problems resulting from segregation and discrimination. But before these programs have been able to counter the effects of past discriminatory Federal policy, the administration is proposing to reduce them by one-third. This action would consign large numbers of minority families to continued occupancy of substandard private housing and to residence in federally assisted housing projects located primarily in segregated neighborhoods. 32/

31/ Ibid.

32/ HUD documented in a 1979 report the current, pervasive nature of housing discrimination in the United States. See U.S., Department of Housing and Urban Development, Measuring Racial Discrimination in American Housing Markets (May 1979).

Community Health Centers

In 1975, Congress enacted legislation authorizing the establishment of community health centers to provide comprehensive health care services to medically underserved areas of the country. 1/ Community health centers provide a variety of medical services, including diagnosis, treatment, preventive medicine, and dental, emergency, mental, rehabilitative, and home health care. Transportation services are also provided as needed. 2/

The community health center program had its origins in the neighborhood health center program authorized by the Economic Opportunity Act Amendments of 1966, which provided for the establishment of 50 centers. 3/ By 1974, 104 neighborhood health centers had been established, 4/ and by 1980, there were 862 community health centers serving populations totaling approximately 5 million 5/ with an authorized budget of $397.5 million. 6/

According to the former administrator of the Health Services Administration, 80 percent of the persons receiving services provided by community health centers are minorities. 7/ Of the these, 67 percent are black, 10 percent Hispanic

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1/ Special Health Revenue Sharing Act of 1975, Pub. L. No. 94-63, §330, 89 Stat. 304, 342.

2/ *Id.*; 42 C.F.R. §51c102(h), (j) (1980).

3/ Economic Opportunity Act Amendments of 1966, Pub. L. No. 89-794, §211, 80 Stat. 1451, 1463.

4/ S. REP. NO. 95-839, 95th Cong., 1st Sess. 9, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 9088, 9142.

5/ Gerald E. Sussman and Lois Steinfeldt, "Capacity Building, Linkages, and Rural Health Systems: The Federal Perspective." *Public Health Reports*, vol. 96, no. 1 (Jan. - Feb. 1981), p. 55.

6/ 42 U.S.C.A. §254c(g)(2) (1980).

7/ Dr. George I. Lythcott, Director, Health Services Administration, statement, *Civil Rights Issues in Health Care Delivery*, a consultation sponsored by the U.S. Commission on Civil Rights, Washington, D.C., April 15, 1980, p. 338.

and 3 percent other minorities. 8/ The community health center system, therefore, clearly plays an important role in providing racial minorities with access to health care.

The problems of racial discrimination, poverty, and poor health are inseparable. In 1968, the National Advisory Commission on Civil Disorders reported that the "residents of the racial ghetto are significantly less healthy than most other Americans" and have greater incidence of major diseases, higher rates of mortality and admission to mental hospitals, and lower availability and utilization of medical services. 9/

Justice Thurgood Marshall noted these interrelationships in the case of Regents of the University of California v. Bakke:

> The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro.
>
> A Negro child today has a life expectancy which is shorter by more than five years than that of a white child. The Negro child's mother is over three times more likely to die of complications in childbirth, and the infant mortality rate for Negroes is nearly twice that for whites....[T]he percentage of Negroes who live in families with incomes below the poverty line is nearly four times greater than that of whites.
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> ....The relationship between those figures and the history of unequal treatment afforded to the Negro cannot be denied. At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro. 10/

8/ Ibid.

9/ Report of the National Advisory Commission on Civil Disorders, (Washington, D.C.: Government Printing Office, 1968), pp. 136-37.

10/ Regents of the University of California v. Bakke, 438 U.S. 265, 395-97 (1978) (footnotes omitted).

Congress similarly recognized this relationship when enacting the legislation that authorized neighborhood health centers. During congressional debates on the Economic Opportunity Act Amendments of 1966, Senator Robert F. Kennedy (D, N.Y.) stated:

> Child health...is poor and care inadequate. Infant mortality in the ghettoes is more than twice the rate outside--for example in Bedford-Stuyvesant in New York, whose rate of over 40 per thousand is one-third higher than the rate in the underdeveloped Communist country of Yugoslavia. Half of all babies born in Manhattan last year had no prenatal care at all; the rate of mental retardation among poor people in these poverty ghettoes is seven times higher than the rate among the more fortunate. 11/

A critical element of the struggle to eliminate racial discrimination was addressing the health care needs of the nation. As President Lyndon Johnson declared in his 1964 economic message to the Congress:

> Even beyond civil rights legislation, the fight to end discrimination requires constructive action by all governments and citizens to make sure--in practice as well as in principle--that all Americans have equal opportunities for education, for good health, for jobs, and for decent housing. 12/

Community health centers have had a "positive impact on the health status of the communities which they serve," 13/ fulfilling an important remedial function in the effort to achieve equal opportunity for minorities who historically have lacked adequate health care.

11/ 112 CONG. REC. 24795 (1966) (remarks of Sen. Robert F. Kennedy D--N.Y.).

12/ Annual Message to the Congress: The Economic Report of the President, 1963-1964 PUB. PAPERS, 155, 165 (Jan. 20, 1964).

13/ S. REP. NO. 95-839, 95th Cong., 2d Sess. 9, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 9088, 9142.

The administration has proposed terminating categorical funding for community health centers and 15 other health services programs, 14/ replacing them with a health services block grant, 15/ and reducing the total funding formerly flowing to these programs by 25 percent from FY 1981 levels. For FY 1982, this amount would be $1.138 billion. 16/ Each State would receive 75 percent of the total amount of funds it and all its subdivisions received in FY 1981. 17/ There would be few strings attached to the expenditure of block grant money. 18/ States could spend an unlimited portion of the funds for obtaining technical assistance in developing, implementing, and administering health services programs. Furthermore, 10 percent of block grant funds received by States could be transferred to three other proposed block grant programs in the areas of preventive health activities, social services, or energy and emergency assistance. 19/

The proposed changes in the health care budget and the latitude proposed for State administration bode ill for America's minorities in medically underserved areas, who rely on Federally-funded community health centers for the provision of basic medical services.

14/ Executive Office of the President, Office of Management and Budget, Fiscal Year 1982 Budget Revisions: Additional Details on Budget Savings, April 1981, pp. 148-49.

15/ Executive Communication 1045 (hereafter cited as EC-1045), a letter from the Secretary of the Department of Health and Human Services, transmitting a draft of proposed legislation to consolidate Federal assistance to States for health services, to provide greater flexibility to States in administering health services programs, and for other purposes, p. 1, 2, as noted in 127 CONG. REC. H1389 (daily ed. April 7, 1981).

16/ EC-1045, p. 2; proposed "Health Services Block Grant Act," §328.

17/ Ibid., EC-1045, p. 2; proposed "Health Services Block Grant Act," §329.

18/ Ibid., EC-1045 p.2.

19/ Ibid., EC-1045, p. 1; "Health Services Block Grant Act," §330A(c).

Comprehensive Employment and Training Act (CETA) Public Service Employment and Special National Programs

The Comprehensive Employment and Training Act (CETA), administered at the national level by the U.S. Department of Labor, is the Federal Government's primary vehicle for addressing the problems of the unemployed. CETA provides funds to 500 "prime sponsors," generally units of State and local government that assess local needs and provide employment and training to the economically disadvantaged, the unemployed, and the underemployed. The goals of CETA funded programs include enhancing self-sufficiency 1/ and eliminating artificial barriers to employment. 2/ Services provided by prime sponsors include classroom training, on-the-job-training, public service employment, counseling, work experience, child care and other support services.

CETA outlays for FY 1979 totaled $9.4 billion. Of that amount, $6.9 billion was spent on CETA programs in which minority participation rates ranged from 45 to 49 percent. 3/ Transitional and "countercyclical" public service employment programs accounted for 54 percent of total outlays, with a minority participation rate of 45 to 46 percent. 4/ In addition, CETA funds programs to assist in the employment and training of groups comprised predominantly or exclusively of persons of color, including Indians and other Native Americans, persons of limited English proficiency, and migrant and seasonal farmworkers.

Historically, blacks and other minorities have found doors to employment shut by racial prejudice. Opportunities for equal education, training, and on-the-job experience were similarly closed or severely restricted. The result, Congress explicitly acknowledged, was disproportionately high unemployment rates for racial minorities. As one congressional committee noted,

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1/ 29 U.S.C. §801 (Supp. III 1979).

2/ 29 U.S.C. §823(a)(4) (Supp. III 1979).

3/ U.S., Department of Labor, Department of Health and Human Services, Employment and Training Report of the President (1980), pp. 25, 27 (hereafter cited as Employment and Training Report).

4/ Ibid.

"Riots in the summer of 1967 focused national attention on the chronic lack of decent paying jobs in the nation's inner city neighborhoods" 5/ where black unemployment and black teenage unemployment was almost twice that of their white counterparts. 6/ The committee also recognized that within society there were groups, comprised disproportionately of nonwhites, facing special hardships in the labor market, including migrant and seasonal farmworkers, persons of limited English proficiency, and Native American Indians. 7/ The House Committee on Education and Labor also acknowledged that racial discrimination often played a significant role in creating unemployment and poverty among persons of limited English proficiency and Native American Indians. 8/

Enacting the Full Employment and Balanced Growth Act of 1978, Congress found that discrimination remained a problem and declared, "Increasing job opportunities and full employment would greatly contribute to the elimination of discrimination based upon sex, age, race, color, religion, national origin, handicap, or other improper factors." 9/

CETA programs play a significant role in overcoming the barriers to employment caused by continuing racial discrimination. In fact, Congress specifically required that

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5/ S. REP. NO. 92-48, 92d Cong., 1st Sess. (1971), reprinted in [1971] U.S. CODE CONG. & AD. NEWS 1171, 1178.

6/ Id., p. 1173.

7/ Id., pp. 1186-1188.

8/ In its report, the committee cited testimony stating "The language barrier and discrimination have deprived many of our people of the right to basic education, limted our employability outside Chinatown and caused high rates of unemployment and underemployment...." H.R. REP. NO. 93-659, 93d Cong., 1st Sess. 1973, reprinted in [1973] U.S. CODE CONG. & AD. NEWS 2935, 2947. Similarly, the committee noted: "That Indians suffer serious discrimination, cultural shock, and unemployment in the nation's cities is well documented, most recently in the [Southwest Indian Report] of the U.S. Civil Rights Commission in May of this year." Id., at 2948.

9/ 15 U.S.C. §3101(b)(4) (Supp. III 1979).

all CETA "[p]rograms shall contribute, to the maximum extent feasible, to the elimination of artificial barriers to employment and occupation advancement." 10/ Clearly, racial discrimination is an "artificial barrier to employment." 11/ The elimination of artificial barriers to employment is analagous to the theory of employment discrimination embodied in Title VII of the Civil Rights Act of 1964, 12/ which prohibits both intentional discrimination and employment practices that adversely affect minority employment and that are not required in the performance of the job. 13/

CETA also works to eliminate discrimination and the present effects of past discrimination by targeting services and jobs to those individuals and groups who are most in need. The statute requires that "[e]mployment and training opportunities for participants shall be made available by prime sponsors on an equitable basis in accordance with the purposes of this act among significant segments of the eligible population giving consideration to the relative numbers of eligible persons in each such segment." 14/ The term "significant segments" is now defined as "groups of the population identified in terms of the following demographic characteristics: age, sex, race, and national origin." 15/

CETA Public Service Employment (PSE) (Titles II-D & VI) and Title III Special National Programs are two of the primary tools for combating present discrimination and the current effects of past discrimination. PSE programs offer temporary employment with public or private non-profit employers and training to unemployed, economically-disadvantaged persons in jobs providing needed public services. 16/ The goal of

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10/ 29 U.S.C. §823(a)(4). The statute defines "artificial barriers to employment" as including "limitations in the hiring, firing, promotion, licensing, and other terms and conditions of employment which are not directly related to an individual's fitness or ability to perform the duties required by the employment position." Id., at §802(3).

11/ 20 C.F.R. §675.4 (1980).

12/ 42 U.S.C. §2000e-17 (Supp. 1979).

13/ See Griggs v. Duke Power Co., 401 U.S. 424 (1971).

14/ 29 U.S.C. §823(b)(1)(A) (Supp. III 1979).

15/ 20 C.F.R. §675.4 (1980).

16/ 29 U.S.C. §§853-859, 961-970 (Supp. III 1979).

transitional PSE (Title II-D) is to provide these workers with work experience and skill development that will enable them to obtain unsubsidized employment. 17/ Prime sponsors operating PSE programs that receive financial assistance are required to undertake "analyses and reevaluations of job descriptions and, where feasible, revisions of qualification requirements at all levels of employment, including civil service...with a view toward removing artificial barriers to public employment...of those whom it is the purpose of this chapter to assist." 18/ Recent evidence documents high rates of successful transition from PSE transitional jobs to unsubsidized private sector jobs. 19/ Countercyclical PSE programs (Title VI) are funded during times of high unemployment. 20/ Because minorities tend to be "last hired and first fired" 21/ the program is considered particularly important to give racial minorities work experience and an unbroken work record.

When Congress first created a PSE program in 1971, 22/ it acknowledged the existence of a job gap between whites and racial minorities. 23/ Congress was aware at that time that the private sector was not capable of absorbing all unemployed persons, particularly those from the inner city. A "Job

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17/ Ibid., at §853.

18/ Ibid., at §824(f).

19/ Laura L. Morlock, Ph.D., *et al*, "Long Term Follow-up of Public Service Employment Participants: The Baltimore SMSA Experience During the 1970's" (study completed at Johns Hopkins University, 1981); *Employment and Training Report*, p. 26; National Employment Law Project, Inc., *Impact Statement on Proposed Cuts in CETA Public Service Employment Programs* (Feb. 23, 1981), p. 3.

20/ 29 U.S.C. §961 (Supp. III 1979).

21/ See U.S. Commission on Civil Rights, *Last Hired, First Fired* (1977).

22/ Emergency Employment Act of 1971, Pub. L. No. 92-54, 85 Stat. 146.

23/ See text accompanying nn. 5 & 6.

Opportunity in the Business Sector" program was tried and failed, partly because of a downturn in the economy. 24/ Congress has since reaffirmed the judgment that PSE programs may be necessary to tackle the problem of the hard-core unemployed. 25/ Congress also recognized that special national programs were necessary to deal with the special labor market disadvantages suffered by Native Americans, migrant and seasonal farmworkers, persons of limited English proficiency, and others whose labor market problems and concerns typically extend beyond the jurisidiction of local prime sponsors. 26/ Composed predominantly or exclusively of persons of color, these groups have suffered racial discrimination and the current effects of past discrimination. 27/ The U.S. Department of Labor directly and through funding of national and local organizations provides a variety of training, counseling, job placement, and public service employment programs for these persons to supplement the efforts of prime sponsors to break down historic barriers to unsubsidized employment. 28/

The FY 1981 budget authority for CETA was approximately $8 billion. The administration has proposed reducing the FY 1982 budget for CETA by more than half the FY 1981 level to $3.6 billion. Title II-D and Title VI Public Service Employment would be completely eliminated, and about $45 million would be cut from Title III Special National Programs, a reduction of about one-half of the program. 29/ Eliminating the PSE programs would deprive members of racial minorities, who are least likely to gain employment in the private sector,

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24/ S. REP. NO. 92-48, 92d Cong., 1st Sess. (1971), reprinted in [1971] U.S. CODE CONG. & AD. NEWS 1171, 1179.

25/ 15 U.S.C. §3112 (Supp. III 1979).

26/ 29 U.S.C. §§ 872-885 (Supp. III 1979).

27/ See n. 8, *supra*. Statistics supplied by Margaret Walker, Director, Information Unit, Field Services Division, Legal Services Corporation, indicate that migrant and seasonal farmworkers are 78 percent Hispanic, 15 percent black, and 6.8 percent white.

28/ *Employment and Training Report*, pp. 29-34.

29/ Budget data supplied by the U.S. Department of Labor on file at the Office of the General Counsel, U.S. Commission on Civil Rights.

of the opportunity to acquire job skills, work experience, as well as the confidence necessary to break through barriers to employment erected by continuing discrimination, the current effects of past discrimination and the cycle of poverty. Sharply reducing the special national programs would curtail the availability of training, employment and services to those who are most in need of assistance if they are to break the bonds of poverty and discrimination and take their places in the labor market in accordance with their abilities.

Community Services Administration

In 1974 the Community Services Administration (CSA) was created 1/ as an independent agency within the executive branch to be "in all respects, and for all purposes, the successor authority to the Office of Economic Opportunity [OEO]." 2/ OEO was established in 1964 3/ and was a key element of the national effort to eliminate poverty.

The war on poverty program was concerned not only with the eradication of poverty, but also with the elimination of centuries of racial discrimination. President Johnson recognized that blacks were among those particularly vulnerable to the ravages of poverty. 4/ Moreover, the poverty suffered by blacks differs from the poverty known by whites. President Johnson noted that these differences "are solely and simply the consequence of ancient brutality, past injustice, and present prejudice." 5/ Blacks have endured a "devastating heritage of long years of slavery; and a century of oppression, hatred, and injustice" 6/ making it particularly difficult for blacks to successfully escape from the vicious cycle of poverty.

OEO's objective was to attack the causes and consequences of poverty through coordination of Federal programs with the activities of State and local levels of government and private organizations. Likewise, the overall purpose of the Community Services Administration is to eliminate poverty and to minimize its effects. CSA is the central Federal agency for the development of programs that are carried out principally by State and local grantees to fight poverty. CSA also coordinates interagency and intergovernmental anti-poverty efforts.

1/ CSA was established by the Community Services Act of 1974, Pub. L. No. 93-644, 88 Stat. 2301.

2/ 42 U.S.C. §2941(a) (1976).

3/ Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 528.

4/ Annual Message to the Congress: The Economic Report of the President, PUB. PAPERS 155, 165 (Jan. 20, 1964); Commencement Address at Howard University: "To Fulfill These Rights", PUB. PAPERS 635 (June 4, 1965) (hereafter cited as Howard University speech).

5/ Howard University speech, p. 638.

6/ Ibid.

CSA administers many diverse programs which address distinctly different needs of the poor. Among these are programs in the areas of community food and nutrition, energy conservation and winterization, community economic development, local initiative, State economic opportunity and senior opportunities and services. 7/

Chief among the programs administered by CSA and perhaps its best-known is the Community Action Program (CAP). This program administers financial and technical assistance to over nine hundred community action agencies serving more than 16 million urban and rural poor in all 50 states. 8/ In its report on the 1974 bill, the House Committee on Education and Labor recognized that while the problem of poverty is national in scope, its solutions may in part be found at the local level. "Communities are encouraged and helped to develop programs aimed at the special needs of their own poor families, to develop their own ideas, commit their own resources, assume responsibility for initiating and carrying out programs suited

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7/ U.S., General Services Administration, Office of the Federal Register, National Archives and Records Service, United States Government Manual 1980-1981 (1980), pp. 518-19.

8/ Executive Office of the President, Office of Management and Budget, Fiscal Year 1982 Budget Revisions: Additional Details on Budget Savings, April 1981, p. 342; S. REP. NO. 95-892, 95th Cong., 2d Sess. 5, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 5407; U.S., General Services Administration, Office of the Federal Register, National Archives and Records Service, United States Government Manual 1980-1981 (1980), pp. 518-19.

to their needs." 9/ Although the focus is on local action, localities with substantial pockets of poverty do not have the resources for "bootstrap" solutions. For them, Federal assistance is essential if such programs are to continue. The very need for these services in such communities indicates that local budgets are strained beyond capacity to provide such programs on their own.

The FY 1981 budget authority for CSA is $536 million. The administration's budget proposal would authorize no funds for the Community Services Administration after FY 1981. 10/

9/ H. REP. NO. 93-1043, 93d Cong., 2d Sess., reprinted in [1974] U.S.CODE CONG. & AD. NEWS 8043, 8045.

President Johnson, in proposing the creation of the community action program, also recognized the importance of local plans to address the unique condition of poverty affecting individual communities:

> This program asks men and women throughout the country to prepare long-range plans for the attack on poverty in their own local communities.
>
> These are not plans prepared in Washington and imposed upon hundreds of different situations.
>
> They are based on the fact that local citizens best understand their own problems, and know best how to deal with those problems....
>
> The most enduring strength of our nation is the huge reservoir of talent, initiative and leadership which exists at every level of our society.
>
> Through the Community Action Program we call upon this, our greatest strength, to overcome our greatest weakness.

Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty, PUB. PAPERS 375, 378 (Mar. 16, 1964).

10/ Executive Office of the President, Office of Management and Budget, Fiscal Year 1982 Budget Revisions: Additional Details on Budget Savings, Apr. 1981, p. 342.

The administration's budget proposal would thus eliminate CSA at the end of 1981. Authority to carry out the types of activities now funded under CSA would be included in a proposed social services block grant. Decisions would be made at the State level as to whether any funds remain available for the programs CSA now administers. A stated "rationale" for eliminating CSA and converting present categorical funding to block grants--"to return desision-making authority to the State and local levels, [and] to eliminate overlap and duplication" 11/-- seems to overlook the congressional purpose in establishing the Community Services Administration and the Office of Economic Opportunity before it.

11/ Ibid.

Summary

The Commission has examined ten programs created or redesigned in the 1960s and early 1970s to overcome the present effects of the legacies of slavery, segregation and discrimination. The administration's revised FY 1982 proposed budget will have a damaging effect on the progress these programs have made in fulfilling the Federal government's civil rights obligations under the Civil War amendments. This budget proposes to completely eliminate the Legal Services Corporation, the Community Services Administration and Economic Development Administration assistance programs. Significant cuts are slated for a number of programs, including the areas of bilingual education, small business, comprehensive employment and training, and federally assisted housing. In other programs, the administration proposes to extinguish specific targeting through categorical grant funding under current statutes, such as the Emergency School Aid Act, the community health centers section of the Special Health Revenue Sharing Act of 1975, and Title I of the Elementary and Secondary Education Act, in favor of block grants. These budgetary cuts lend great weight to the grave concern that the Federal government is retreating from its historic and constitutional civil rights obligations.

The budget reductions for, or abolition of, programs proposed by the administration will pose barriers to the fulfillment of the constitutional promise of equality embodied in the Civil War amendments and will limit the ability of those programs to attain the congressional objectives of the program-specific legislation. As past Congresses have realized in their deliberations over these programs, the solution to achieving the federal mandate of both the Civil War amendments and the program-specific legislation is to make these programs effective or replace them with programs that promise greater effectiveness.

Chapter 5
The Block Grant Approach

To achieve the goals of the Civil War amendments, Congress has established Federal programs to resolve problems that States and local governments historically have been unable or unwilling to address. In referring to the enactment of the 13th, 14th and 15th amendments, the Supreme Court of the United States declared:

> The true spirit and meaning of the amendments...cannot be understood without keeping in view the history of the times when they were adopted, and the general objectives they plainly sought to accomplish. At the time when they were incorporated into the Constitution, it required little knowledge of human nature to anticipate that those who had long been regarded as an inferior and subject race would, when suddenly raised to the rank of citizenship, be looked upon with jealousy and positive dislike, and that state laws might be enacted or enforced to perpetuate the distinctions that had before existed.... 1/

Although the Nation has made progress since those words were written in 1879, Congress' own assessment of our recent racial and economic climate has consistently led it to conclude that there has been a need for extensive Federal control over the allocation and expenditure of Federal funds on the State and local level to ensure the achievement of national policy objectives.

The nondiscriminatory use of Federal monies has been one such national policy objective, and therefore Congress enacted Title VI of the Civil Rights Act of 1964, which provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 2/

1/ Strauder v. West Virginia, 100 U.S. 303, 306-307 (1879).

2/ 42 U.S.C. §2000d (1976).

The legislative history of Title VI indicates congressional concern regarding instances in which Federal monies given to States to benefit all citizens were instead channeled to the benefit of whites only. Funds for manpower development and training, monies for public employment services, and for scientific and educational research are but a few examples of Federal funds provided to States that have been cited by Members of Congress as being used in a discriminatory manner. Title VI, which was enacted specifically to address such discriminatory uses by State and local governments, 3/ authorizes each Federal agency administering a financial assistance program to take action to enforce the principle of nondiscrimination in the use of Federal funds. Perhaps the most effective sanction available under Title VI is fund termination. This sanction was effectively used, for example, in the mid- to late 1960s to dismantle a number of dual elementary and secondary school systems in the South. 4/ The fact that Federal funding has been generally provided in the past in the form of narrowly focused and targeted grants, known as "categorical grants", has been conducive to the government's ability to determine exactly how Federal funds were being used and whether such funds were used in a discriminatory manner. Because significant provisions that appear in categorical grants are missing from the administration's block grant proposals, it will be difficult, if not impossible, to make such determinations if the proposals are enacted in their present form.

Categorical grant programs are designed to help solve particular problems or to meet specific needs, including eliminating the effects of past or current discrimination. Programs for handicapped children, for example, have been funded under the Education For All Handicapped Children Act. Compensatory or remedial education programs for students in low-income neighborhoods are funded under Title I of the

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3/ See the legislative history of Title VI *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2355, 2510-2517.

4/ This is not to state that Title VI enforcement has been adequate, even under the categorical grant approach to Federal financial assistance programs. The failure of governmental agencies to vigorously apply administrative sanctions to the extent required to effectively address widespread discriminatory practices has been well documented by this Commission. See U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort - To Ensure Equal Educational Opportunity* (1975), pp. 127-133.

Elementary and Secondary Education Act. Desegregating school systems have received financial assistance through the Emergency School Aid Act (ESAA).

Under the block grant approach as proposed by the administration, a wide range of activities would be authorized for funding under a single piece of legislation. States would be free to allocate their block grant funds to any of these activities. They, therefore, would also be free not to use any funds for some activities that are presently targeted to increase equal opportunity. The education block grant, for example, would consolidate 44 separate elementary and secondary education programs, including those described above. States, thus, could eliminate or drastically reduce programs designed to increase the participation of and improve services to students covered by Title VI. In addition, the administration's block grant proposals would repeal existing legislative requirements that provide for Federal oversight, participation by persons affected by Federal programs, and effective civil rights enforcement. For example, the targeting of Federal funds to the neediest schools and the requirement of parent participation in programs presently funded under Title I would be eliminated. Federally mandated procedural safeguards for the identification, evaluation, and placement of children with handicapping conditions would be lost. Maintenance of funding at a certain basic level would no longer be required. Pre-award civil rights compliance reviews, which have been a much lauded aspect of the ESAA programs, would be eliminated. 5/

5/ H.R. REP. NO. 95-1137, 95th Cong., 2d Sess. 93, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 4971, 5063. "To be eligible for an ESAA basic grant a district must be implementing a court-ordered, [Department of Education] Title VI or voluntary plan of desegregation....Before receiving funds, a district must undergo a review by [the Department of Education's] Office for Civil Rights to determine that it has not committed any civil rights violation since 1972."

"According to David Tatel, [former] Director of OCR, ESAA-related compliance activities resulted in the following desegregation accomplishments during fiscal year 1974 and 1975: 224,000 children were reassigned from racially isolated classes, 25,000 students were reassigned from racially identifiable classes, and 116 affirmative action plans were adopted, [leading] to the hiring of 300 teachers and three principals." Ibid.

The administration's proposals, which are based in part on the theory that State and local governments now can be trusted to provide equitably for all their citizens, 6/ emphasize block grants, rather than categorical grant programs, as a primary form of Federal assistance to State and local governments. 7/ Proceeding from this theory, the administration is recommending the elimination of all the structural protections for the disadvantaged that the Congress built into grant-in-aid programs over a period of years. In transmitting the education block grant proposal to the Congress, Secretary of Education Terrell Bell stated:

6/ Terrell H. Bell, letter to Vice President George Bush transmitting the Elementary and Secondary Consolidation Act of 1981, Apr. 28, 1981, U.S., Department of Education, Washington, D.C. (hereafter cited as Terrell Bell, letter to Vice-President Bush).

7/ Various legislative proposals to provide Federal financial assistance through block grants have been introduced in the 97th Congress. In addition to the proposed education block grant legislation, major block grant proposals include the "Housing and Community Development Amendments of 1981," the "Preventive Health Block Grant Act," and the "Health Services Block Grant Act." The two health related block grants, one for general health services and the other for preventive health programs, would consolidate 25 programs. The States would receive $1.4 billion to spend on health programs as they see fit. The States would decide how to allocate the money among their localities, report to the Health and Human Services Department as to how they plan to spend it, and audit the spending that takes place. There are no requirements for public participation in the planning process and no targeting requirements. The proposed community development block grant would combine the existing Community Development Block Grant Program with the Urban Development Action Grant. Most of the proposed $4.1 billion would continue to go to big cities under formula, but the States would take over administration of the small cities program. A Social Services Block Grant proposal would consolidate several programs, including the Title IV-B Child Welfare Services Program, the Title IV-E Foster Care and Adoption Assistance Program and programs administered by the Community Services Administration, and would be authorized at a level of $3.8 billion. Block grant funds could be used for social services and for related training and administrative expenses, as well.

> [T]he bill would repeal existing grant authorizations along with the provisions that generate the need for burdensome and unnecessary regulations and reports. There would be no fiscal requirements such as maintenance of effort, supplement not supplant, comparability, excess costs, or matching. There would be no required advisory committees or other procedural mandates that detract from the authority of responsible officials. There would be no program "set-asides," earmarks or other division of funds beyond the appropriation authorizations and the allocation provisions governing them. There would be no required applications, mandated lists of eligible schools or students, or average daily attendance reports. 8/

It is difficult to ascertain how eliminating existing Federal requirements, which Secretary Bell has labeled "unnecessary," without providing effective alternatives will assure the provision of services that the Congress has deemed to be essential for the educational well-being of the Nation's school children. "Maintenance of effort" and "supplement, not supplant" requirements have been used in categorical grant programs to ensure that State and local governments maintain a certain level of State and local fund allocation for affected programs despite the receipt of Federal grants for such programs. These requirements were designed to assure that Federal funds would provide benefits to children over and above those which State and local governments would normally have been able to provide. The elimination of these requirements, therefore, in all likelihood will result in the reduction of services to needy children. In addition, the removal of "targeting" requirements, such as those provided in Title I, would eliminate any assurance that children who are most in need would receive at least a certain level of critical

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8/ Terrell Bell, letter to Vice-President Bush.

educational services. 9/ These unrestricted funding proposals are being made in spite of the numerous studies that amply document the nature and extent of civil rights enforcement problems that have arisen under block grant programs and similar Federal funding approaches and in the face of mounting evidence that categorical grant programs are having a significant impact upon the educational needs which the Congress sought to address. 10/ This Commission found in its study of general revenue sharing, for example, that Federal revenue sharing funds were being used to free State and local funds which could then be used for discriminatory purposes. 11/ The General Accounting Office made similar findings in its 1976 study of general revenue sharing. Its report stated:

> Whether intentional or unintentional, governments can circumvent the nondiscrimination provisions in the Act by using

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9/ The administration estimates that this consolidation process would reduce "administrative costs which eat up as much as 13 percent of current Federal dollars awarded to States and localities," Revised Fiscal Year Budget, p. 2. The Congressional Budget Office, however, "estimates that administrative costs consume only 2 percent of the entire Education Department budget, and that a 50 percent reduction in these costs would save only $81 million in FY 1982." See Democratic Study Group, U.S. House of Representatives, Special Report, Reagan's Proposed Budget Cuts, No. 97-8 (March 20, 1981), p. 16.

10/ Title I programs, for example, are highly effective. Since 1975, carefully designed studies consistently report that Title I programs improve students' performance in reading and math over the school year. Moreover, the most recent study reports that students seem to maintain these increases when they "graduate" from Title I programs. See U.S., Department of Education, National Advisory Council on the Education of Disadvantaged Children, Title I, Today: A Fact Book (Washington, D.C., Spring, 1981), p. 1. See also the National Institute for Education evaluation of Title I which found that Federal "...regulations assist districts in resisting pressure to use Title I funds for general education or for tax relief." Compensatory Education Study, p. 11.

11/ U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--To Provide Fiscal Assistance (1975), p. 130 (hereafter cited as To Provide Fiscal Assistance).

> revenue sharing in ways that free their own funds for other unrestricted uses. This can easily occur because budgetary decisions regarding the use of available funds are typically made considering a government's revenues from all sources including revenue sharing. Consequently the actual impact of funds from one source such as revenue sharing is often impossible to isolate, and the Federal Government might be inadvertently financing activitites in which discrimination exists. 12/

The Commission's study found a lack of data collection to such extent that the Federal government was not in a position to determine whether benefits of funded programs were being equitably distributed to minorities and women. 13/ Audits and compliance reviews were inadequate and were implemented in a fashion unlikely to uncover civil rights violations. 14/ In fact, this Commission found that the block grant approach could produce a hesitancy on the part of Federal enforcement officials to perform their statutorily mandated functions. 15/ Congress addressed these and other problems in the 1976 State and Local Fiscal Assistance Act Amendments, which were based in part on this Commission's findings and recommendations. Nevertheless,

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12/ U.S., General Accounting Office, Nondiscrimination Provision Of The Revenue Sharing Act Should Be Strengthened And Better Enforced (Washington, D.C.: Government Printing Office, 1976), p. 17.

13/ To Provide Fiscal Assistance, p. 133.

14/ Ibid., pp. 134-35.

15/ For example, Federal agency officials in the Law Enforcement Assistance Administration informed this Commission that pre-award compliance reviews were not being conducted because they believed that such reviews might interfere with the "delicate balance between Federal/State relations." Although there has been evidence of a change of attitude in this regard on the part of the Federal officials involved, it is apparent that the accountability for enforcement of federally guaranteed rights in block grant programs may fall victim to an excessive desire on the part of Federal officials to accommodate State and local authorities. See U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--To Extend Federal Financial Assistance (1974), p. 349.

according to a recent General Accounting Office study, civil rights enforcement in general revenue sharing programs has not improved substantially. 16/

The history of the Community Development Block Grant Program provides another strong case in point. A number of years ago, Congress established the revitalization of the Nation's cities as a national goal. To this end, financial assistance amounting to billions of dollars has been provided to the Nation's communities to meet various needs. The primary purpose of these expenditures has been to fulfill certain national needs and to promote community and regional development. 17/

In order to achieve these objectives, Congress enacted Title I of the Housing and Community Development Act of 1974, which created the Community Development Block Grant Program. As is characteristic of the block grant approach, this program replaced several former categorical grant and loan programs, including urban renewal, neighborhood development program grants, public facility loans, water and sewer and neighborhood facilities grants, and Model Cities grants, under which communities applied for funds on a case-by-case basis. 18/

The block grant approach reflected a desire on the part of Congress to shift the responsibility for community development from the Federal Government to local governments, as well as to streamline the application and review process. 19/ The block grant program provides communities more flexibility than was allowed under the categorical programs to design community development programs. Although the act provides for greater decentralization of authority to cities, local discretion was tempered by national objectives, because, as finally enacted, the act provides that cities must meet certain requirements in their use of block grant funds. 20/

16/ U.S., General Accounting Office, The Revenue Sharing Acts 1976 Amendments: Little Effect On Improving Administration And Enforcement of Nondiscrimination Provisions (Washington, D.C.: Government Printing Office, 1980).

17/ U.S., General Accounting Office, The Community Development Block Grant Program Can Be More Effective In Revitalizing The Nation's Cities (Washington, D.C.: Government Printing Office, 1981), p. 1.

18/ Ibid., p. 3.

19/ Ibid.

20/ Ibid.

In April 1981, the General Accounting Office released its assessment of the effectiveness of the Community Development Block Grant Program in carrying out congressionally established public policy objectives. Although the General Accounting Office found that significant improvements have occurred in the implementation of the Community Development Block Grant program in response to the issuance of additional Federal regulations, serious deficiencies in the program still exist. 21/ The General Accounting Office found that the lack of targeting of block grant monies is hindering the achievement of the central purpose of the act, i.e., urban revitalization. 22/ Failure to target monies has resulted in a fragmentation of effort, with far less than optimal impact on urban blight evident from the expenditure of large amounts of Federal funds. 23/ The General Accounting Office is recommending that the Congress tighten eligibility requirements so that current abuses, including the awarding of rehabilitation grants to individuals with incomes in excess of $30,000 and for nonessential projects such as the construction of sundecks and the installation of trash compactors, can be eliminated. 24/

The General Accounting Office questions in this report "whether the Nation can afford the flexibility that now exists in the program in light of the program's failure to achieve Congressional purposes." 25/ The broad latitude given to local governments has become a hindrance to the attainment of these goals. 26/ The General Accounting Office is recommending that the Congress issue more guidelines governing the disposition of Federal monies in the Community Development Block Grant Program. 27/ The report states, "While we recognize the desire

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21/ Ibid., pp. 12-13.

22/ Ibid., pp. 6-11.

23/ Ibid.

24/ Ibid., pp. ii-vi.

25/ Ibid., p. 16.

26/ Ibid.

27/ Ibid.

for flexibility in the program, limitations on rehabilitation activities should be considered because funds are currently being spent on lower priority repairs and for persons not in the greatest need." 28/

This study also found that local political pressures to "split up the pie" as particular power groups saw fit prevented the achievement of block grant program goals. 29/ The study found that, on the one hand, cities want the funds with no restrictions, while on the other hand, the lack of Federal regulations leaves the program in the situation of being "everything to everybody." 30/ The study cites a Brookings Institution participant who evaluated one city's program by stating:

> [T]here are several desperately bad areas that want to be targeted. They will not be targeted because of the pressure from those 14 single member districts and the representatives from them to spread around things like parks and recreation and swimming pools....The neighborhoods are in desperate need of help. Yet, the political system is spreading CDBG [Community Development Block Grant] funds across the whole consolidated government. 31/

The General Accounting Office found that greater targeting "would eliminate the negative effects of political and citizen influence" and recommended that Congress consider "whether further measures should be taken to maximize the impact of block grant funds without excessive Federal intervention in the program's day to day operations." 32/

It appears that large Federal assistance programs that leave unfettered discretion to recipients generally do not serve the needs or protect the rights of minorities and other disadvantaged groups as well as do categorical programs or

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28/ Ibid.

29/ Ibid., p. 7.

30/ Ibid.

31/ Ibid., pp. 7-8.

32/ Ibid., p. 15.

narrowly focused consolidated grants conditioned on strict, strongly enforced, Federal requirements. To the extent that block grant programs lack these elements, the enforcement of Title VI and other civil rights provisions will be severely compromised. The administration's block grant proposals provide even less civil rights protections than similar experiments that have been found to be problem-ridden. It is upon these findings, and upon the Commission's own studies and those of other national and local groups, 33/ that we base our serious reservations regarding the proposal to expand, at this time, the utilization of the unrestricted block grant approach in Federal financial assistance to States and local governments. This is not to say that categorical programs have been entirely free of abuse. Over the years, this Commission has sought improvement in terms of civil rights enforcement of the various categorical grant programs. 34/ Studies have documented, however, that the categorical approach is far less susceptible to abuse than is the block grant approach. In its study of general revenue sharing, 35/ for example, the General Accounting Office confronted this issue with regard to the problem of substituting Federal funds for local funds in order to pursue discriminatory purposes and concluded that fiscal substitution was far more likely to occur in programs of general revenue sharing than in categorical programs. 36/

The Commission recognizes that the block grant approach has an appeal based in part upon a desire to allow some degree of flexibility to State and local governments in the administration of programs that, after all, have their greatest impact on the State and local levels. It is the view of this Commission that decentralization of Federal funds distribution can be achieved short of turning the Federal Government into a mere conduit for the flow of the American tax dollar. The same purpose can be achieved through the maximum delegation of authority to act in the area of administration to State and local governments, while civil rights enforcement remains a

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33/ See U.S. Commission on Civil Rights, The Community Development Block Grant Program In Arkansas (1979); Center for National Policy Review, Civil Rights Under General Revenue Sharing (Washington, D.C.: Catholic University Law School, 1975).

34/ See U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort (1974).

35/ Nondiscrimination Provision of the Revenue Sharing Act Should Be Strengthened and Better Enforced, p. 17.

36/ Ibid.

Federal Government responsibility. State and local governments would be required to commit themselves to work within the public policy framework established, monitored, and enforced by the Federal Government. If, however, a block grant approach is followed, the specific proposals should include adequate safeguards to assure that national policies are achieved. To the extent that the block grant approach incorporates safeguards that would ensure funding to the neediest citizens, require that a certain level of essential services be maintained, provide for community participation and effective Federal civil rights oversight, such an approach to Federal financial assistance may be in keeping with the public policy objectives that have started the Nation on the path toward equality for all its citizens.

In sum, the Nation's experiments with block grant and other similar funding approaches have produced less than optimal results. The available data suggest that, as currently structured, block grant programs are subject to serious abuse on the State and local level. The various assessments show that: (1) there is a continued need for targeting Federal financial assistance to State and local governments; (2) there is a continued need for Federal regulation of the expenditure of Federal funds; and (3) there is a continued need for Federal civil rights enforcement with regard to the disposition of Federal monies to ensure that such monies are not used in a discriminatory manner.

CONCLUSION

The Civil War amendments freed the slaves and guaranteed them full rights of citizenship more than a century ago. In so doing, they established a constitutional commitment to civil rights for all people and charged the Federal Government with ensuring that these rights become a reality. These constitutional promises remain unfulfilled. Throughout the history of civil rights in this Nation, the Federal Government has faltered in its enforcement role; an era of retrenchment and renewed discrimination has followed every period of promise and hope.

The 1954 Supreme Court decision in Brown v. Board of Education, heralded an age in which it seemed the Federal Government would finally meet its obligation to assure equal opportunity for all citizens. Congress later enacted the civil rights laws and established a variety of social and economic programs that worked to overcome the vestiges of slavery and segregation that exclude blacks and other minorities from the mainstream of American life. This legislation also sought to protect all Americans from arbitrary discrimination and provided a vast array of needed economic and social opportunities. Today, as these programs are registering some measurable progress, the administration has recommended the elimination or curtailment of many of them and the reduction of allocations for civil rights enforcement.

After examining the administration's proposed budget, the Commission is concerned that history may be repeating itself and that the Nation may be entering another period of civil rights retrenchment.

Because of the Federal obligation created by the Civil War amendments, civil rights is not just another special interest competing for funding. Beginning in the 1960s, Congress created a panoply of people-oriented programs. They were designed to provide access to "the American dream" of a self-supporting citizenry. If fully implemented these programs would achieve the constitutional promises embodied by Civil War the amendments. The administration, regrettably, has targeted for elimination or reduction many of these essential programs.

Reducing allocations for specific civil rights enforcement activities will mean that millions of Americans will continue to be victims of discrimination in education, employment, housing, and government services. Cutting these programs designed to overcome the effects of past discrimination will delay achievement of equality. Converting categorical programs to block grants, without providing effective enforcement mechanisms both for Title VI enforcement and for meeting on a national basis the needs of specific populations, jeopardizes fundamental Federal guarantees.

The Commission's analysis suggests that the administration's budget threatens the progress made during the last several decades and the progress yet necessary to realize the moral vision that has guided this nation in its grandest moments. Given the historic constitutional obligations resulting from the Civil War amendments the Commission believes that the President and the Congress have a fundamental responsibility to assure the Nation that in their budget plans there shall be no retreat from the objective of liberty and justice for all.

SUMMARY

The U.S. Commission on Civil Rights has examined the proposed revisions to the fiscal year 1982 Federal budget. This budget proposes to reduce allocations for specific civil rights enforcement efforts, to weaken or eliminate programs integrally related to the implementation of civil rights, and to expand the block grant approach. Our inquiry has proceeded in the belief that these proposed budget cuts should be analyzed both individually and collectively to determine their consistency with the core principles in our national value system expressed in the 13th, 14th, and 15th amendments to the Constitution.

The Commission believes that these "Civil War amendments" form the constitutional backdrop against which the proposed revisions of the Federal budget must be viewed. Their constitutional promises of equality, freedom and civil rights should be extensively and sensitively considered in any governmental budget cutting process. To reduce these ideals to simply a "special interest" competing for budgetary attention contradicts fundamental national principles and a historically bipartisan commitment. Such a budgetary perspective also overlooks the history which led to the passage of the Civil War amendments--a history which cannot be too often recalled, if we, as a Nation, are to avoid its repetition.

In 1856, a decade before the adoption of the Civil War amendments profoundly altered the Constitution, the Supreme Court of the United States declared in Dred Scott v. Sandford that under the Constitution slaves were property, not people. They were constitutionally considered, the Court wrote, "...altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights a white person was bound to respect."

The Civil War amendments and the civil rights legislation they made possible outlawed both slavery and its "badges and incidents," which reflect the relationships created by slavery. Enacted to purge the doctrine of white supremacy from the Nation's law and character, the amendments did more than create new, nationally-endowed rights to freedom and equality for all people. They also gave the Federal Government the constitutional responsibility and authority to effectuate these rights in an unreconstructed South that had devised strategy after strategy to nullify them.

The Federal promise to protect constitutional guarantees was soon broken. During the late 1870s and early 1880s, the Federal Government relinquished its role as guarantor of constitutional rights and retreated behind political and legal assertions of "States rights." By the turn of the century, new legal forms of subservience and deprivation had emerged--the infamous Black Codes, Jim Crow laws, and "separate but equal" *de jure* segregation.

Within 40 years of their passage, the Civil War amendments had been rendered completely ineffectual at achieving their original purposes. Although the institution of slavery had been eliminated, officially mandated racial segregation trapped black people in a legally sanctioned web of racism and poverty. State and local laws and private customs resulted in the denial of even the most basic civil rights. The Federal Government did not intervene. Indeed, it adopted many of the same practices. The philosophy of white supremacy, generated to justify slavery, was extended to oppress Asians, Indians, and Hispanics. The exclusion of persons from life's opportunities on the basis of color and "racial heritage" became a State-sanctioned commonplace. Even when there were no legal restrictions, blacks and other persons of color were confronted by an unyielding philosophy of assumed white racial superiority.

The Supreme Court decision in *Brown v. Board of Education* in 1954 marked a major break from this history. By the mid-1960s the Federal Government had resumed its post-Civil War role as primary guarantor of civil rights. Congress enacted a series of civil rights laws banning discrimination in voting, public accommodations, education, employment, housing, and governmental services. It buttressed this civil rights legislation with a range of social and economic legislation aimed at overcoming the conditions of poverty that nearly a century of broken promises had perpetuated. In a 1966 message to Congress, President Lyndon B. Johnson observed that while these new social and economic programs were not *per se* "civil rights programs," they would be "crucial, and perhaps decisive elements" in the struggle of the black American for "a fair chance in life." As President Johnson noted, "It is self-evident that the problems we are struggling with form a complicated chain of discrimination and lost opportunities... All the links--poverty, lack of education, underemployment and now discrimination in housing--must be attacked together."

Passed largely in response to the demands of the civil rights movement, this bipartisan package of civil rights laws and social and economic programs represented nearly as profound a shift in our national laws as had the Civil War amendments. The Federal Government once again made a solemn commitment to enforce and attain the constitutionally commanded promises of civil rights. Furthermore, these legal rights were supplemented by Federally sponsored social and economic opportunities designed to overcome the barriers left behind by segregation, subordination, and the white supremacy doctrine. The new legislation extended legal protection against arbitrary discrimination to other groups, including women, older persons, and the handicapped. The Federal Government became the recognized leader in efforts to eliminate the vestiges and current practices of discrimination and to broaden social, economic, and electoral opportunities.

Only within the past decade have these equal opportunity laws begun to transform life in the United States. Despite this progress, discrimination remains very much a reality in 1981. To believe that these Federal programs could have accomplished their objectives within their short lifetimes drastically underestimates the scope and intractability of the problems they were designed to address.

The reemergence of the Ku Klux Klan and other proponents of hate-ideologies serve as graphic reminders that virulent, overt bigotry has not disappeared from our political landscape. Discrimination also comes in many more subtle--but no less pernicious--forms. In virtually all sectors of society, massive social and economic inequalities between white males and the rest of the population persist, indicating the existence of entrenched and pervasive systems of discrimination that are able to thrive without the open expression of prejudiced beliefs.

Every new department and agency created to attack these deep-rooted problems has been controversial. Administrators responsible for civil rights and related social and economic programs have always encountered strong opposition and serious obstacles to their statutory missions. Civil rights opponents historically have advocated that the Federal Government relinquish its leadership role in securing constitutional and statutory promises of equal opportunity, and the Commission is concerned that the proposed budget reductions are a move in that direction.

As we have shown, the Constitution and its history have required the Federal Government to assume a decisive leadership role in the area of civil rights. That history also reveals unmistakable and alarming parallels between the 1880s and the 1980s. A century ago, the Federal Government abandoned its commitment to enforce rights to freedom and equality promised by the 13th, 14th, and 15th amendments. The cessation of Federal enforcement activities marked the end of Reconstruction and the beginning of the national pretense that the vestiges of slavery and white supremacist policies had essentially been eliminated within a single generation. This pretense was to prevail for nearly 80 years. In the 1980s, widely-voiced exhortations for indiscriminate reductions of Federal activities are occurring amidst increasing assertions that civil rights programs have substantially accomplished their objectives. Has the Nation started down a path of civil rights retrenchment similar to that of the post-Reconstruction period? Does the substantial budget reduction in Federal civil rights and related activities proposed for FY 1982 foreshadow a retreat from the principles and promises of the 13th, 14th, and 15th amendments resembling that which occurred within a generation of their enactment?

Viewed from this constitutional and historical perspective, the proposed revisions to the fiscal year 1982 Federal budget must be a matter of national, not special, concern.

In the area of civil rights enforcement, these revisions jeopardize recent efforts to make much needed improvements in Federal civil rights enforcement in ways that may have long term consequences on the ability of this Nation to live up to its constitutional commitment to equality of opportunity. Reductions in the civil rights enforcement resources of five agencies examined by the Commission, amounting to a loss of 697 positions (9.4 percent), are likely to limit actual enforcement, undercut the deterrent effect of such enforcement by diminishing the credibility of potential Federal action, reduce the motivation and assistance for those who would voluntarily comply with civil rights obligations, and weaken State and local efforts to ensure equal opportunities.

The Commission has examined ten programs created or redesigned in the 1960s and early 1970s to overcome the present effects of the legacies of slavery, segregation and discrimination. The administration's proposals would halt or hinder the progress these programs have made toward fulfilling the Federal Government's civil rights obligations under the Civil War amendments. The revised FY 1982 budget would completely eliminate the Legal Services Corporation, the Community Services Administration and Economic Development Administration assistance programs, and significant cuts are slated for a number of programs, including the areas of bilingual education, small business, comprehensive employment and training, and Federally assisted housing. These budgetary cuts lend great weight to the grave concern that the Federal Government is retreating from its historic and constitutional civil rights obligations.

In other programs, the administration proposes to substitute broad block grant funding for the specific targeting accomplished by categorical grant funding in areas such as the

Emergency School Aid Act, the community health centers section of the Special Health Revenue Sharing Act of 1975, and Title I of the Elementary and Secondary Education Act. These proposed budgetary shifts lend great weight to the concern that the Federal government may be in the process of retreating from its historic and constitutional obligations to civil rights.

Finally, the administration's proposed shift from the utilization of categorical grant programs to a reliance upon block grants raises serious civil rights concerns. An objective assessment of today's racial and economic climate compels the conclusion that there is still the need for a continuing Federal oversight of the allocation and expenditure of Federal funds. Such minimum standards are not adequately provided for in the administration's block grant proposals.

The implications for millions of Americans in the proposed FY 1982 budget are clear. Reducing allocations for specific civil rights enforcement entities hampers Federal ability to enforce prohibitions against discrimination in education, employment, housing and the provision of governmental services. Cutting social and economic programs designed to overcome the effects of past discrimination will delay achievement of true equality of opportunity. Converting categorical programs to block grants, while Federal enforcement mechanisms remain undeveloped, jeopardizes Federal guarantees that funds will be targeted in the manner Congress intended.

Our Nation's continuing civil rights problems are as real and as profound as the national fiscal problems that have necessitated a complete review of the Federal budget. These civil rights problems, of course, cannot be solved by merely throwing tax dollars at them. Along with a national resolve, the key ingredients of successful civil rights programs are committed and unequivocal governmental leadership, sound management of staff and financial resources, effective enforcement and implementation strategies, and skilled and dedicated governmental personnel.

In this statement, the Commission has identified the reductions in civil rights enforcement and related programs that are proposed by the President's FY 1982 budget. The price proposed to be paid is a diminution and possibly a reversal of civil rights progress. The proposed budget implicitly and in some areas explicitly relinquishes the Federal civil rights leadership role. In very concrete ways, the President's budget is not taking proper cognizance of the Federal Government's historic and constitutional obligations under the Civil War amendments.

Appendix A

Concern over the administration's proposed budget cuts and their effect on women have been expressed by a number of organizations. The Women's Equity Action League (WEAL) states that since 100 percent of the programs under the Women's Education Equity Act and Title IV of the 1964 Civil Rights Act affect women, proposed cuts and eventual consolidation into block grants will sharply curtail efforts to eliminate sex-based discrimination at the State level. States have traditionally been unwilling to voluntarily eliminate sex discrimination, and as a result many of the existing Federal programs were enacted in response to findings that State programs were inadequate.

Cuts in the Women, Infants and Children (WIC) program affect only women. WIC was designed to identify those women and children considered to be "nutritional risks" and provide them needed assistance in balancing their diets. The result of proposed cuts will endanger the health of present recipients and limit the number of women to be aided in the future.

Some 93 percent of welfare recipients are women and children. WEAL noted that many of those receiving Aid to Families with Dependent Children (AFDC) are frequently on welfare less than a year for medical reasons or because they are unable to find employment.

Of those persons who will lose minimum Social Security benefits, 75 percent of them are women. A substantial percentage of these women are single, part-time workers or domestics.

Cuts in the food stamp program will affect a large number of Americans. Of the total population receiving food stamps, 69 percent of them are women and 11 million are children.

Funding for the Legal Services Corporation is to be terminated under the proposed budget. Of the Legal Services' client population, 67 percent are women, many of whose cases involve Social Security or welfare benefits. Thirty-six percent of the staff attorneys are female.

The Comprehensive Employment Training Act (CETA), which is slated for drastic cutbacks, serves a population that is 50 percent female. The program provides training for women who may be elderly, displaced homemakers or single mothers attempting to enter the workforce.

Organizations such as Women's Legal Defense Fund, and Women Employed are concerned that reduced budgets for the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs will severely limit the effectiveness of enforcing nondiscrimination in the workplace. Present funding has been insufficient to permit adequate review and enforcement pursuant to proven complaints of sex discrimination.

Federally Employed Women has considered the effects of budget cuts and the freeze and cutback in Federal hiring. A substantial number of Federal employees are women. They represent the majority of non-career, part-time, temporary and intermittent employees and are likely to be the first affected by a Reduction in Force (RIF). Because women seldom have veteran's preference and have only recently gained entrance into the middle grades through affirmative action, a RIF will make their positions particularly vulnerable. The cuts will also curtail programs emphasizing the recruitment, hiring, training, and upward mobility of women.

Wider Opportunities for Women (WOW), in examining the effect of the cuts on CETA, noted that some 100,000 women will be eliminated from CETA programs. These cuts will have the corresponding effect of limiting funding to many women's employment programs that rely on CETA funding as their primary source of support. The proposed cuts will also affect battered women's shelters, rape crisis projects, hotlines, women's law centers, and women's health clinics. Because many of the women who will be eliminated from CETA are single mothers they will have to turn to unemployment compensation, AFDC or welfare benefits.

According to the Center for Women Policy Studies (CWPS), 40 percent of the 460 battered women's shelters receiving some federal assistance will be affected by the budget cuts. Nearly a third of the shelters obtain legal assistance from the Legal Services Corporation. Battered women will be further affected by the budget cuts because assistance programs, such as AFDC and food stamps, will also be cut.

Women USA is concerned with the administration's focus of cuts and increases in the national budget. Although the administration insists that needed budget cuts will reduce the deficit and balance the budget, cuts in women's programs will be shifted to provide increased military spending. Of particular interest are the effect of the trade-offs in the cuts and increases. The proposed cut of $636 million in FY 1982 in AFDC and child support enforcement programs would cover the cost of one SSN-688 nuclear submarine. A cut of $20 million in funding to EEOC is two-thirds the cost of constructing one helicopter.

The Center on Social Welfare Policy and Law and the Children's Foundation are particularly concerned with the cuts to social service programs. The cut in food programs will result in increased day care costs. Cutbacks in AFDC spending will mean the loss of benefits for a substantial number of families and many families will be totally ineligible. Benefits for a family of three are under $250 monthly in 15 States and only 8 States provide benefits of more than $400 monthly.

The administration's proposed budget would eliminate all funding for the Juvenile Justice and Delinquency Prevention program. Because 70 percent of female offenders are status offenders (as compared to 25 percent of the male population), the National Council of Jewish Women (NCJW) is particularly concerned with the effects of eliminating funding. Although community-based services have been encouraged, young females are frequently detained for longer periods and lesser offenses than are their male counterparts.

Appendix B

Listed below is a sampling of a few of the smaller programs affecting minorities that are slated for budget reductions in Fiscal Year 1982.

1. National Health Service Corps Scholarship Program (Department of Health and Human Services)

The National Health Services Corps Scholarship Program was established to "assure an adequate supply of trained physicians, dentists, and nurses for the National Health Services Corps...." 1/ Recipients perform obligated service as members of the National Health Service Corps in "health manpower shortage areas." A large proportion of the designated areas have significant numbers of Hispanics and blacks. 2/

Scholarship assistance in FY 1980 was directed to approximately 1,259 students of medicine and osteopathy, 167 students of dentistry, and some 193 other health care specialists. Approximately 35 percent of scholarships under this program have gone to minorities in health care studies. 3/ Many areas served by students assisted by National Health Corps scholarships would otherwise have inadequate health programs.

Budget

	FY 1980	FY 1981	FY 1982
Appropriation:	$79,500,000	$79,500,000	$37,873,000

The original FY 1981 appropriation was reduced by a rescission proposed by the administration to a level of $63,400,000. 4/ The administration's FY 1982 budget request further reduces the scholarship program to $37,873,000 by eliminating the granting of any new scholarships during FY 1982. 5/ The administration has

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1/ 42 U.S.C. §294t (Supp. III 1979).

2/ Rae Lowen, Program Officer, National Health Service Corps, Department of Health and Human Services, telephone interview, May 28, 1981.

3/ Ibid.

4/ Ibid.

5/ Ibid.

stated that a general overabundance of medical doctors mitigates the need for the program in FY 1982. 6/ The elimination of new National Health Service Corps scholarships in FY 1982 will very substantially reduce assistance under a program which has provided major assistance to minority students and has contributed to the provision of health services to minority underserved communities.

2. Minority Access to Research Careers (MARC) (Department of Health and Human Services)

This program provides institutional and individual fellowships in biomedical sciences 7/ "[t]o assist minority institutions to ...train greater numbers of scientists and teachers in health related fields and...increase the number of minority students who can compete successfully for entry into graduate programs...in biomedical science fields." 8/ An estimated total of 70 research awards ranging between $3,900 and $100,000 were made in FY 1980. 9/

Budget

	FY 1980	FY 1981	FY 1982
Appropriations:	$3,200,000	$5,310,000	$2,800,000 10/

The FY 1981 budget level for the MARC program may be reduced by a proposed rescission to the reduced figure of $4,526,000. 11/ The administration's FY 1982 budget proposal for this program is $1.7 million less than that available in FY 1981 should the proposed rescission be approved.

3. Pre-Freshman and Cooperative Education For Minorities and Women in Engineering (Department of Energy)

This program provides project grants, to be matched by assistance from industry or the applicant college or university, to a maximum

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6/ Ibid.

7/ Edward Bynum, director, Minority Access to Research Careers Program, National Institutes of Health, telephone interview, May 29, 1981 (hereafter cited as Bynum Interview).

8/ Executive Office of the President, Office of Management and Budget, 1980 Catalog of Federal Domestic Assistance, p. 438.

9/ Ibid., p. 439.

10/ Justine Finch, Program Analyst, Health Budget Analysis Division, Department of Health and Human Services, telephone interview, June 22, 1981.

11/ Ibid.

of $25,000 "to increase the educational opportunities available to qualified and qualifiable minority group members and women in the field of engineering," 12/ and to produce "an increase in minority and women engineering student population..." 13/

Budget

	FY 1979	FY 1980 (est.)	FY 1981 (est.)	FY 1982
Obligations: Grants 14/	$250,000	$270,000	$250,000	0

The grants program for Pre-Freshman and Cooperative Education for Minorities and Women in Engineering was halted by internal Department of Energy (DOE) decision after rescission of $800,000 for education programs from the FY 1981 DOE budget. 15/ The Office of Management and Budget has instructed DOE not to request FY 1982 funding of this program. 16/ This decision will result in the elimination of this program which is of special assistance to minorities and women. 17/

4. Research Initiation in Minority Institutions (National Science Foundation)

The objective of the program is to help predominantly minority colleges and universities develop greater research capability on their campuses and encourage participating faculty to compete for research funds from all appropriate sources. 18/ Funds are used to cover the costs necessary to establish active research programs,

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12/ Executive Office of the President, Office of Management and Budget, 1980 Catalog of Federal Domestic Assistance, p. 995.

13/ Ibid., p. 996.

14/ Ibid.

15/ Donald Duggan, University and Industry Programs Division, Office of Energy Research, Department of Energy, telephone interview, May 28, 1981.

During FY 1981 DOE had expected to fund the program at a total level of $400,000 through the use of discretionary funds.

16/ Ibid.

17/ During FY 1980, 21 grants were made under the program. Ibid.

18/ Executive Office of the President, Office of Management and Budget, 1980 Catalog of Federal Domestic Assistance, pp. 824-25.

such as wages and salaries, scientific equipment, expendable equipment and supplies, travel, certain publication and other essential costs. 19/

In FY 1979, approximately $426,000 was obligated for grants; in FY 1980 $1 million; and in FY 1981 $1.5 million. 20/ Ten awards were made in FY 1979, 25 in FY 1980, and it was estimated that 30 would be made in FY 1981. 21/ National Science Foundation budget staff state that there has been a total rescission of the 1981 appropriation level of $1.5 million and that the program has been eliminated in the FY 1982 proposed budget. 22/

19/ Ibid.

20/ Ibid.

21/ Ibid.

22/ The Deputy Assistant Director for Astronomical, Atmospheric, Earth and Ocean Sciences, National Science Foundation, indicated that NSF staff will be directed to encourage the receipt, review and funding of grants to minority institutions in all programs. Telephone interview with James Gereus, Acting Budget Officer, National Science Foundation, Washington, D.C., May 29, 1981.

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